



P R O C E E D I N G S

(Electronically recorded on April 10, 2009)

THE COURT: All right, we're on the record in case No. 082900089. Counsel and the parties will make their appearances, please.

MR. JENKINS: Your Honor, Larry Jenkins and Lance Rich here for the petitioners that are in Court with us as well.

THE COURT: Thank you.

MR. HARDY: David Hardy, your Honor, here on behalf of the intervener, Carrie Terry.

THE COURT: Thank you.

MS. REYES: Your Honor, Jennifer Reyes on behalf of Robert Manzanares, who is present in the courtroom today.

THE COURT: Thank you.

MS. REYES: As well as Dale Dorius, who is also representing Robert Manzanares.

THE COURT: Thank you. It's my understanding we have six things to hear today. I think -- now, maybe I'm incorrect, but I think we had an order to show cause --

MS. REYES: Right.

THE COURT: -- and then a motion to dismiss --

MS. REYES: Correct.

THE COURT: -- a motion for the immediate custody of the minor child, a motion to transfer custody determination to Colorado, a motion for attorney's fees, and a motion for

1 visitation. Are there any matters that I've missed?

2 MS. REYES: (No verbal response).

3 THE COURT: Do you want to handle them one at a time,  
4 or do you want to handle them side-by-side? Since most of them  
5 are your motions, I'll let you cover everything you want, then  
6 let them respond. I don't have a preference, so --

7 MS. REYES: Okay.

8 THE COURT: -- whatever is easier on Counsel.

9 MS. REYES: Your Honor, I think the four motions  
10 that were initially filed, the motion to dis -- for renewed  
11 dismissal, the adoption, petition, motion for immediate  
12 custody, motion for transfer, and motion for attorney fees,  
13 I think if we handled those side-by-side, I think a lot of  
14 those arguments tend to blend with each other. So I would  
15 propose arguing those four together, and then -- as well as  
16 the motion for visitation. That may be appropriate. Then I  
17 think the order to show cause can be dealt with separately.  
18 That would be my preference, but it's up to the Court.

19 MR. JENKINS: That makes sense, your Honor.

20 THE COURT: Okay. What's the feelings of which ones  
21 you'd like to take first? Do you want to do the order to show  
22 cause first, or do you want to do that at the end?

23 MS. REYES: Your Honor, I think that I would prefer  
24 resolving that at the end, if we may --

25 THE COURT: All right.

1 MS. REYES: -- and I would go forward with the other.

2 THE COURT: All right, they're your motions.

3 MS. REYES: Thank you. Your Honor, again, Jennifer  
4 Reyes on behalf of Robert Manzanares. Our first motion before  
5 the Court is our motion to dismiss the adoption petition. We  
6 would indicate to the Court that it's appropriate for the Court  
7 at this juncture to dismiss the adoption petition, based on the  
8 provisions found in Code Section 78(b)-6-133.

9 The code reads specifically, "If a person whose  
10 consent for adoption is required refuses to consent, the Court  
11 shall determine whether proper grounds exist for termination of  
12 that person's rights." There is more specific language, and  
13 it says, "If the consent is required to pursuant subsection  
14 78(b)-6-120 --" and then it has several provisions there.

15 What I would indicate to the Court is that pursuant  
16 to 78(b)-6-120, specifically paragraph (d), and paragraph (b)  
17 and (e), I believe, Mr. Manzanares' consent is required. So  
18 I'm going to turn to that code section again, 78(b)-6-120. So  
19 specifically 78(b)-6-120 subsection (d), it said, "A biological  
20 parent who has been adjudicated to be the child's biological  
21 father by a Court of competent jurisdiction prior to the  
22 mother's execution of consent to adoption or her relinquishment  
23 of the child for adoption, that in effect requires the consent  
24 of that party."

25 The facts of the case are this Court vacated the

1 consent of Carrie Terry in its memorandum decision dated  
2 August 20<sup>th</sup> of 2009. The Colorado paternity action issued an  
3 order on February 29<sup>th</sup> of 2008, which indicated that Robert  
4 Manzanares was the father of the minor child, and that he was  
5 entitled to all rights and legal responsibilities as it related  
6 to the child.

7           Therefore, due to the vacation of the consent of  
8 Carrie Terry, there wasn't adjudication prior to any further  
9 consent. There's been no other consent that we're aware of  
10 that's been executed by the birth mother, Carrie Terry. So, in  
11 effect, that provision, subsection (d) would apply, and mandate  
12 that Robert Manzanares' consent be necessary.

13           In addition to that I would also indicate to the  
14 Court that the original hearing on the paternity action to  
15 determine parentage to the child was scheduled for February 20<sup>th</sup>  
16 at 9 o'clock a.m. As the Court's aware, there was a consent  
17 taken of Carrie Terry on the same date, February 20<sup>th</sup> of '08 at  
18 approximately 8:45 a.m.

19           Had it been for her failure to disclose relevant  
20 information with regard to the paternity action, it's our  
21 position that the consent would have not been taken, and the  
22 paternity action in Colorado would have gone forward prior  
23 to a consent being issued.

24           In addition to that, we would indicate that an  
25 adjudication technically had been made by admission of Carrie

1 Terry due to the fact that she issued a reply, or a response,  
2 I should say, to the verified petition filed on Mr. Manzanares  
3 in Colorado; and her reply and response is dated February 12<sup>th</sup>  
4 of 2008. Paragraph 7 of that reply she admits that Robert  
5 Manzanares is the biological parent of the child.

6           So I think if you're looking at just subsection (d),  
7 whether or not Mr. Manzanares' consent is mandated, I would  
8 argue that there's three points to that. First, it's mandated  
9 because the February 29<sup>th</sup>, '08 order from Colorado adjudicates  
10 him as the father.

11           I would also say that her own self-admission and  
12 her pleadings dated February 12<sup>th</sup> of '08, paragraph 7, is  
13 an adjudication upon the pleadings; and that was prior to  
14 a consent being taken, prior to February 20<sup>th</sup> of '08. Since  
15 the Court vacated that consent, obviously there's been no other  
16 consent given. So that's been prior.

17           Then the issue about the hearing being held at the  
18 same time, basically the same -- same time, same date, where  
19 the paternity action would have been adjudicated had it not  
20 been for Ms. Terry's wrongful actions. So under that specific  
21 subsection, Mr. Manzanares' consent is required.

22           Then we go down in that same code section, and we  
23 look at subsection (e). It says, "A biological parent who  
24 is executed and filed a voluntary declaration of paternity  
25 with the State Registrar of Vital Stats prior to the mother's

1 execution or relinquishment of the child for adoption.”

2           Mr. Manzanares has filed a registration of the  
3 Colorado action, as well as filed a Utah paternity action  
4 and registered that with the Bureau of Vital Records. The  
5 Court again vacated the consent on August 20<sup>th</sup> of 2009 pursuant  
6 to memorandum decision. The Colorado action was registered  
7 with the State of Utah on August 22<sup>nd</sup> of 2008; and then the Utah  
8 paternity action was registered with the State on September 11<sup>th</sup>  
9 of 2008.

10           Then you go onto subsection (f). So that’s another  
11 why his consent would be necessary. Subsection (d)’s been  
12 complied with, subsection (e)’s been complied with. Then you  
13 look at subsection (f). It says, “An unmarried biological  
14 father of an adoptee’s consent is necessary only if he strictly  
15 complies with the requirements of subsection 78(b)-6-121.”

16           So then we turn to that code section. Section 78(b)-  
17 6-121 talks about “with regard to a child who is six months of  
18 age or less at the time the child is placed with the adoptive  
19 parents,” which is our situation here, and this is 78(b)-6-  
20 121(e), “the consent of an unmarried biological father is  
21 not required unless prior to the time a mother executes her  
22 consent for adoption the unmarried biological father initiates  
23 a proceeding in the District Court of the State to establish  
24 paternity.”

25           Again, the Court has vacated Ms. Terry’s consent as

1 of August 20<sup>th</sup> of '09. Mr. Manzanares initiated a proceeding  
2 in the District Court in Utah on or about September 10<sup>th</sup> of  
3 '09. That's been filed with this Court. The case number is  
4 084904086, and the assigned Judge has been Jay Glen Iwasaki.

5 In addition to that, Mr. Manzanares filed the notice  
6 of the paternity action with the State Registrar on 9/11 of  
7 '08. We provided the Court with previous copies of that  
8 certificate of registration to show that not only has he filed  
9 his Colorado action previous to that, but then a Utah action  
10 after that.

11 The next process that we have to address is whether  
12 or not Mr. Manzanares has offered to pay fair and reasonable  
13 amounts of expenses incurred with regard to the minor child.  
14 The Court, in its memorandum decision issued on August 20<sup>th</sup> of  
15 2008, has already made a finding that Mr. Manzanares has paid,  
16 and offered to pay reasonable support for the minor child and  
17 the birth expenses.

18 Then since that time, as the Court may be aware  
19 with regard to our motion for visitation, we filed some other  
20 documents that would evidence that Mr. Manzanares has paid  
21 additional monies to the petitioners in this case for support  
22 of his daughter.

23 Specifically in September of '08 Mr. Manzanares sent  
24 two checks in the sum of 150 each, for a total payment of 300  
25 in September. He forwarded a check in February of '09 in the

1 sum of \$500; and then in January -- I'm sorry. In January  
2 he forwarded two checks, both in the sum of \$500, equaling  
3 \$1,000. Then in February an additional \$500 payment. So  
4 since September of '08 he's paid additional sums of 1,800 for  
5 the support of his daughter. So he's complied with that code  
6 section, your Honor; and his consent is required because of  
7 that.

8           Then there's discussion about compliance with sub-  
9 section 78(b)-6-122. If the Court turns to that subsection  
10 -- and the way I look at this -- the ordering of this code, I  
11 think it makes more sense to go to subsection (c) first. It  
12 says, "Notwithstanding the provisions of 78(b)-6-121 --" which  
13 we just went through and may define, and I've explained to the  
14 Court that Mr. Manzanares has complied with the provisions  
15 necessary to require his consent according to that code  
16 section.

17           It says, "The consent of an unmarried biological  
18 father is required if --" and then it goes on to say -- "the  
19 unmarried biological father did not know, and through exercise  
20 of reasonable diligence could not have known before the time  
21 the mother executed the consent for adoption or relinquishment,  
22 that a qualifying circumstance existed."

23           Then you turn to what a is a qualifying circumstance.  
24 If you go up to 78(b)-6-122(1)(a), it talks about a qualifying  
25 circumstance is the following, subparagraph (1), "The child or

1 the child's mother resided on a permanent basis in the state,"  
2 meaning Utah. We've dealt with this issue before, your Honor;  
3 and the code section talks about what the definition of  
4 "reside" or "residency" is in Utah.

5           Specifically that's found in Code Section 20(a)-2-105.  
6 It says, "A resident is a person who resides within a specific  
7 voting precinct in Utah. A person resides in Utah if that  
8 person has a principal place of residence within Utah, and  
9 has a present intention to continue residency within Utah  
10 permanently or indefinitely."

11           The Court recalls that hearings held in July questions  
12 were posed of Ms. Terry with regard to whether or not she had a  
13 residence located in Utah, and whether or not she was intending  
14 on permanently or indefinitely residing in Utah. There was  
15 also discussion about whether or not she had a valid license  
16 and where that -- where that license was issued out of, and  
17 where her child went to school, et cetera.

18           If you look at the responses that Carrie Terry made  
19 on those occasions, it's clear that she was not a resident of  
20 Utah, nor has she been a resident of Utah at any time during  
21 these proceedings or prior to them. So Mr. Manzanares would  
22 not have known that the child or the child's mother resided on  
23 a permanent or temporary basis in the state, because that just  
24 wasn't a fact. That hasn't occurred.

25           Then No. 2, the mother intended to give birth to a

1 child in the state. There's several reasons why Mr. Manzanares  
2 would not have known that. Specifically in Ms. Terry's response  
3 to the verified petition issued in Colorado. She denied that  
4 she was going to be coming to Utah to give birth to a child and  
5 possibly place the child up for adoption. So that was a -- you  
6 know, that to minimal -- in Mr. Manzanares' mind, that cleared  
7 all chances of her doing that, because she specifically denies  
8 that she's intending on doing that.

9           The other issue is based on the mother's testimony,  
10 she didn't intend to give birth in the state of Utah when it  
11 occurred. She said that her child came premature. She was  
12 here just visiting her ill father and other relatives. So  
13 whether or not Mr. Manzanares should have known that she  
14 intended to give birth to the child in the state of Utah,  
15 we would indicate that on two basis that would be no. 1,  
16 because she specifically denied that in her response to the  
17 verified petition filed in Colorado; and No. 2, there was  
18 no intent to give birth, because she gave birth premature,  
19 according to her statements.

20           Then the next qualifying circumstance is whether or  
21 not the child was born in the state; but Mr. Manzanares did not  
22 know that until after the consent was given of his child. So  
23 again we're looking at what his knowledge would have been prior  
24 to her consent given.

25           Then No. 4, "The mother intended to execute a consent

1 to adoption or relinquishment of the child for adoption in  
2 the state or under the laws of the state." Again, we would  
3 indicate that Mr. Manzanares would not have had any knowledge  
4 prior to her consent being executed that she intended to give  
5 a consent to the adoption in Utah.

6 Also, if the Court recalls, Mr. Manzanares' only  
7 contact with regard to adoption issues was from an agency  
8 located in Colorado. So his perception was if an adoption  
9 was going to occur, Ms. Terry would attempt to accomplish  
10 that in Colorado, not in Utah. So, again, there would be no  
11 knowledge that Mr. Manzanares would have had with regard to her  
12 planning on consenting to the adoption.

13 There was also a document presented at the evidentiary  
14 hearing of an email that she had sent to Mr. Manzanares shortly  
15 before her time to come to Utah, I believe it was, wherein she  
16 mentioned to him that when she got back from her visit, that  
17 she and Mr. Manzanares needed to sit down and talk about the  
18 future of this child.

19 So again, that alleviated any thoughts in his mind  
20 that she was even going to be pursuing an adoption plan at that  
21 point in time. He still thought that they had the ability to  
22 discuss the issues and hopefully come to a resolution together  
23 as parents of the child.

24 So we go through the qualifying circumstances and  
25 we find that Mr. Manzanares did not know, before the time

1 Carrie Terry executed a consent, any of the qualifying  
2 circumstances. So then we go down to 78(b)-6-122(c), and  
3 it would be paragraph (b). "Before the mother executed a  
4 consent, the unmarried biological father fully complied with  
5 the requirements to establish parental rights in the child,  
6 and preserved the right to notice of a proceeding imposed by  
7 the last state where the unmarried biological father knew or  
8 through exercise of reasonable diligence should have known the  
9 mother resided."

10           Again, that would be Colorado; and Mr. Manzanares  
11 filed a paternity action in Colorado on January 16<sup>th</sup> of '08,  
12 which was a month prior to his daughter even being born, and  
13 specifically several months before he anticipated her birth,  
14 because she was premature. I believe the estimated due date  
15 for the child would have been sometime in March. So he followed  
16 that provision. Prior to the child even being born he filed  
17 the necessary paperwork in Colorado to strictly comply with all  
18 the requirements there.

19           Then it goes on to say that the unmar -- pardon me --  
20 "The unmarried biological father has demonstrated based on the  
21 totality of circumstances a full commitment to his parental  
22 responsibilities."

23           Then to determine what the parental responsibilities  
24 are, we go up and look at 78(b)-6-122, and it's paragraph  
25 (1)(b); and it talks about different efforts that the birth

1 -- that the biological father has to take. I can go through  
2 those, but specifically the Court's made findings, I believe,  
3 in the August 20<sup>th</sup> memorandum decision that would show that he's  
4 complied with these requirements.

5           No. 1, efforts he has taken to discover the location  
6 of the child or the child's mother. The Court heard testimony  
7 at the two-day evidentiary hearing and trial that after he was  
8 placed on notice from a mutual friend who was a coworker of  
9 Ms. Terry that she had come back to Colorado, and it appeared  
10 she had given birth, he contacted the Byingtons and asked  
11 for their assistance, wondering what had happened.

12           He did everything in his power to try and figure out  
13 the location of his child. He contacted -- his testimony would  
14 reflect that he contacted different hospitals in Utah, and  
15 again, contacted the actual petitioners, who at that point in  
16 time obviously had knowledge of where the child was, and they  
17 failed to disclose any of that information to him.

18           Then No. 2, whether he has expressed or demonstrated  
19 an interest in taking responsibility for the child. Well, the  
20 Court can take notice that, you know, he filed a paternity  
21 action in Colorado months before his daughter was anticipated  
22 to be born.

23           There's been submission of documents to the Court;  
24 and by way of exhibits, I have email correspondence between  
25 Ms. Carrie and Mr. Manzanares shortly after she found out that

1 she was expecting his child, and his strong desire to support  
2 her and be involved in that process, as well as his initiation  
3 of the interaction in this adoption petition, and his efforts  
4 to be here before the Court at every hearing that the Court has  
5 scheduled, and do whatever he needs to do to comply with the  
6 Court's orders.

7           Then the third thing is whether and to what extent he  
8 has developed or attempted to develop a relationship with the  
9 child. Your Honor, my client has always expressed a strong  
10 desire to have contact with his daughter. He was especially  
11 appreciative of the Court's requirement to allow him to have  
12 a visit with his daughter at the last hearing. I believe that  
13 happened sometime in December. That was a great experience  
14 for him and his family, and something he'll never forget,  
15 obviously.

16           The visit went for approximately 40 minutes. After  
17 that visit my client has made substantial efforts by way of  
18 correspondence through Counsels to the Byingtons to again  
19 request any just small visits or any exchange of correspondence  
20 about how his daughter's doing, or pictures. He's made two  
21 specific requests after December. One was in January and  
22 another in February. There's been no response and no offerings  
23 of any additional information or documents that way.

24           Although I will retract that and say there was some --  
25 some pictures emailed to my client that had been taken at the

1 visit on -- in December. So there was some pictures delivered,  
2 but there was not re -- there's been no response until just  
3 yesterday with our request for visitation with this child.  
4 So I would indicate to the Court that he has made, through  
5 Counsel, every interest and request to take responsibility  
6 for his daughter, and have and develop a relationship with her.

7           The next provision is whether he offered to provide,  
8 and if the offer was accepted, did provide financial support  
9 for the child or the child's mother. Again, the Court heard  
10 testimony about that. That he did offer support. That  
11 Ms. Terry did accept his support. She cashed the checks.  
12 There was questions posed of Ms. Terry, "Did Mr. Manzanares  
13 offer more than what he had given you?" Her response was she  
14 couldn't deny that, but she didn't follow -- she didn't ask  
15 for any more assistance than what he had given her; but he did  
16 offer that.

17           Then the next is to whether and to what extent he has  
18 communicated or attempted to communicate with the child or the  
19 child's mother. Again, there has been many attempts to try  
20 and set up visitation or some sort of situation where he could  
21 attempt to bond with his daughter, and those have just been  
22 ignored.

23           The other provision, then, we go to is whether he  
24 has filed legal proceedings to establish his paternity and  
25 take responsibility of the child. Again, he did that back in

1 January of '08. He's done that again here in Utah in September  
2 of '08, and has been involved in this proceeding, attempting to  
3 establish rights to his daughter.

4           So we believe that under those different provisions of  
5 78(b)-6-122, that again, his consent is necessary; and because  
6 of that we go back to what happens when a consent is necessary.  
7 That's found in 78(b)-6-133. It goes on to say, again, if  
8 -- "if a person whose consent for adoption is required --"  
9 here, Robert Manzanares -- "refuses to consent --" obviously  
10 Mr. Manzanares is not willing to consent to the adoption --  
11 "the Court shall determine whether proper grounds exist for  
12 termination of the person's rights pursuant to --" then it  
13 cites provision in the code.

14           What I would indicate to the Court is there's never  
15 been any issues raised by any party in this action, whether it  
16 be the petitioners or the biological mother, that there are  
17 grounds that exist for terminating Mr. Manzanares' parental  
18 rights. The Court inquired about this issue back at the  
19 hearing held in July, whether or not there were allegations  
20 that were going to be brought forth with regard to terminating  
21 parental rights of Mr. Manzanares. So clear back in July that  
22 issue was addressed.

23           I would indicate that the Court issued a memorandum  
24 decision in this case dated October -- let me find it here, I'm  
25 sorry -- would have been October 14<sup>th</sup> of 2008. The Court issued

1 a memorandum decision wherein it specifically stated, by way of  
2 a minute entry, I should say. Not a memorandum decision, but a  
3 minute entry, which the Court required that the parties are to  
4 proceed with this matter. If the parties re -- let's see --  
5 "including filing any relevant or required documents within ten  
6 days of this minute entry decision." It says, "If the parties  
7 require an extension, they may seek the same from the Court.  
8 However, this Court is anxious in moving this forward in an  
9 expedited fashion."

10 So back in October the Court put the petitioners on  
11 notice that if you want -- you know, if you want the Court to  
12 determine any issues in this case, you need to file them within  
13 the next ten days so we can get this case resolved and move  
14 it forward. I note that there's never been a filing or any  
15 issues raised with the Court about grounds for termination of  
16 Mr. Manzanares' rights.

17 We believe that according to the testimony and the  
18 evidence presented in the July hearing, the Court can make a  
19 determination today that there's no grounds that exist for  
20 terminating Mr. Manzanares' parental rights. It would appear  
21 that during that hearing there was ample opportunity, and it  
22 was appropriate for those issues to be raised with the Court,  
23 and nothing was ever addressed about concerns that any party  
24 had with regard to Mr. Manzanares and his ability to parent the  
25 child, his minor daughter.

1 I would note that Carrie Terry was here in Court on  
2 that day, and could have -- and she was testifying and could  
3 have expressed her concerns that she may have had with regard  
4 to Mr. Manzanares at any time to the Court; and that was never  
5 addressed.

6 So once the Court finds that Mr. Manzanares' consent  
7 is necessary, and determines whether proper grounds exist to  
8 terminate his parental rights, then this section goes on to say  
9 if there are not grounds to terminate the person's parental  
10 rights, the Court shall, number one, dismiss the adoption  
11 petition.

12 Again, that's what we're asking the Court to do;  
13 and we believe because Mr. Manzanares' consent is required,  
14 and because there's no basis to terminate his parental rights,  
15 the next step the Court has to take is dismiss the adoption  
16 petition.

17 Then it goes on to say, "The Court shall conduct an  
18 evidentiary hearing to determine who should have custody of  
19 the child; and then award custody of the child in accordance  
20 with the child's best interest."

21 I find this code section somewhat troubling. We had  
22 asked the Court in conjunction with our motion to dismiss to  
23 transfer this case to Colorado for adjudication there with  
24 regard to custody, because there is a pending paternity action  
25 where both mother and father are involved, and there's been a

1 guardian ad litem appointed there. I think considering the way  
2 that the code section reads, it says that the petition shall be  
3 dismissed, number one.

4           So if the Court goes forward and dismisses the adoption  
5 petition, there's no case for the evidentiary hearing to be  
6 -- to be determined in. So because of that, we would ask the  
7 Court to transfer the case to Colorado for determination on  
8 custody.

9           Carrie Terry has actually in her responsive pleadings  
10 to our motion, has indicated to the -- has indicated that she  
11 has no objection. That she actually wants the case to be  
12 transferred to Colorado for a custody determination. So we  
13 think that that's appropriate considering both parties who are  
14 going to be the main custodial interveners here have agreed to  
15 have it transferred to Colorado.

16           Once the adoption petition is dismissed, your Honor,  
17 then you look at well, there's no order of temporary custody  
18 in place any longer granting the petitioner's custody of this  
19 minor child. So what we're asking the Court to do is if the  
20 Court's inclined to dismiss the adoption petition because  
21 Mr. Manzanares' consent is required and because there is no  
22 grounds for a termination of his parental rights, we're asking  
23 the Court to grant custody to Mr. Manzanares.

24           We're doing that on both arguments. If the Court's  
25 inclined to set an evidentiary hearing, then pending that

1 evidentiary hearing, we would ask that the minor child be  
2 awarded to Mr. Manzanares. Then secondary, if the Court's  
3 inclined to transfer the case to Colorado for the custodial  
4 determination, again, Mr. Manzanares be given custody of the  
5 minor child.

6           So we are asking the Court for that. I think that  
7 that deals with a renewed motion for dismiss -- dismissal of  
8 the petition for adoption, our motion for immediate custody to  
9 the father and our motion to transfer the custody determination  
10 to Colorado.

11           THE COURT: Okay, I have a couple of questions on  
12 those, if I can, please.

13           MS. REYES: Sure.

14           THE COURT: The statute doesn't seem to give the  
15 Court any discretion, does it? "The Court shall conduct an  
16 evidentiary hearing." Doesn't give me discretion, does it,  
17 or if you can, to let another Court decide and determine it.

18           Also, if I dismiss the petition, where is the juris-  
19 diction to conduct the second half that is required; that is,  
20 to conduct an evidentiary hearing? Don't you really have  
21 to flipflop those; conduct the evidentiary hearing and make  
22 your determinations of everything that needs to be done or  
23 required under the statute, and then at the end of the day  
24 finally dismiss the petition? Because if you dismiss the  
25 petition now, what authority basis does the Court have to

1 proceed to do anything?

2 MS. REYES: I understand the Court's concern, and  
3 that's why I'm troubled by the way that the statute actually  
4 reads, because the way it reads is specifically under (2)(a)  
5 -- I'm sorry, (2)(b)(1), it says, "If there are not grounds  
6 to terminate the person's parental rights, the Court shall,  
7 No. 1, dismiss the adoption petition. Then, No. 2, conduct  
8 an evidentiary hearing."

9 So that's why it's been troubling to me. It appears  
10 that it's mandating the adoption petition shall be dismissed;  
11 but then it's also --

12 THE COURT: But it's --

13 MS. REYES: -- in turn saying a hearing shall be  
14 conducted.

15 THE COURT: But it doesn't say anything with respect  
16 to timing --

17 MS. REYES: That is correct.

18 THE COURT: -- of the dismissal; and that's what I  
19 was asking. Couldn't it imply or suggest the timing of the  
20 dismissal of the petition is after the evidentiary hearing that  
21 is also mandated to have happen?

22 MS. REYES: I'm not -- I'm not disagreeing with the  
23 Court. I think that that could be inferred.

24 THE COURT: No, I'm -- no, I'm not arguing. I'm just  
25 asking the question.

1 MS. REYES: Sure.

2 THE COURT: Any guidance or thoughts you have there  
3 could be helpful.

4 MS. REYES: Right, I think that that could be inferred;  
5 but again, the other thing that's perplexing to me is the way  
6 this process is to play out. If the Court were to do that, if  
7 the Court were to hold an evidentiary hearing, issue an order  
8 of custody, and then dismiss the adoption petition, in effect,  
9 dismissing the adoption petition I think would dismiss any  
10 orders of the Court that would be issued in that proceeding.

11 So to me -- to me, the whole way that the process is  
12 to go forward is troubling to me; and it's somewhat confusing.  
13 That's why I suggest to the Court -- I understand the Court's  
14 concern about whether or not this is mandatory or elective to  
15 hold this evidentiary hearing; but that because Carrie Terry in  
16 her responsive pleadings has actually agreed to have the issue  
17 of custody determined in Colorado, that maybe by virtue of the  
18 consent of the biological mother and the biological father,  
19 that the Court could transfer jurisdiction to Colorado to  
20 determine custody there.

21 Again, not leaving out the petitioners, but if the  
22 Court finds that Mr. Manzanares' consent is necessary, their  
23 adoption petition is dismissed, and they don't really have a  
24 basis or a grounds to intervene at that point in time with  
25 regard to custody.

1           So I would ask the Court to take notice and look  
2 at Ms. Terry's request of the Court with regard to how the  
3 custody determination should be taken into effect; and if Mr.  
4 Manzanares' position is let's transfer it to Colorado, and her  
5 position is let's transfer it to Colorado, I think by consent  
6 of the parties and their request before the Court, the Court --  
7 I would indicate the Court possibly could do that. That would  
8 be our position with regard to that.

9           THE COURT: Do you have any comment on when it says  
10 that the Court will determine the custody of the child as to  
11 whether that custody is temporary, rather than permanent?

12           MS. REYES: Your Honor, I would think -- it would be my  
13 position that that would be a temporary --

14           THE COURT: Statute doesn't say "temporary custody."

15           MS. REYES: Right. I think I would indicate that  
16 especially in this case that it would be a temporary order  
17 of custody only because there is a pending paternity action in  
18 Colorado where both parents are residents, both parents reside.  
19 The Court's already determined that the Court has jurisdiction  
20 over the issue of parentage there. So I would think it would  
21 be temporary pending a hearing up in Colorado to make a final  
22 determination.

23           THE COURT: Now, doesn't this Court have custody over  
24 the child?

25           MS. REYES: The Court currently --

1           THE COURT: And hasn't the Court in -- Court in  
2 Colorado deferred to Utah on that issue?

3           MS. REYES: I believe that currently the Court has  
4 custody over the child; but if the Court were to dismiss the  
5 adoption petition, then it would leave -- again, I guess my  
6 problem is any order the Court would issue in this adoption  
7 petition once the adoption is dismissed, I don't know what  
8 affect that order would have, because the adoption petition  
9 would be dismissed, and the subsequent orders -- you know, the  
10 orders previously issued in that petition would be null and  
11 void.

12           So, again, it's concerning on how this process actually is  
13 to go forward. I understand the Court's frustration, and I've  
14 been frustrated with the way that it reads as well, but I would  
15 indicate to the Court that at any rate, if the Court entered  
16 an order of custody in this proceeding, that it would be of a  
17 temporary nature, until Colorado could regain jurisdiction,  
18 because a child would then -- okay, let me back up. I  
19 apologize.

20           If the Court awarded custody to either mother or  
21 father in this case on a temporary basis, both of those parties  
22 reside in Colorado. So it's assumed that the child would be  
23 back in the state of Colorado. I think at that point in time  
24 the Court in Colorado could then take jurisdiction over the  
25 custody issue, and maybe the Court could temporarily leave in

1 place the order of custody and wait until Colorado assumes  
2 jurisdiction over the child and they set a hearing date and  
3 then dismiss the adoption petition here; but I'm not sure if  
4 the Colorado Court will go forward with determining custody  
5 until the adoption petition here has been actually dismissed.

6 I'm just trying to brainstorm here with the Court and  
7 give suggestions on maybe ways that this could play out; but I  
8 do think, to answer your question, that it would be a temporary  
9 order of custody, not a permanent order.

10 THE COURT: Go ahead and address the attorney's fees  
11 and visitation, if you would, please.

12 MS. REYES: Okay, thank you. Your Honor, we are asking  
13 the Court to grant an award of attorney's fees on behalf of  
14 Mr. Manzanares, both in this proceeding, and as well as in  
15 the order to show cause proceeding; but I will handle those  
16 separately, because they are addressed separately.

17 It's the position of Mr. Manzanares that the Court's  
18 already made specific findings with regard to the parties, and  
19 the concerns the Court's had with regard to the failure of  
20 disclosure of certain information.

21 THE COURT: Well, let me help you focus where --

22 MS. REYES: Yes.

23 THE COURT: -- my concern is.

24 MS. REYES: Okay.

25 THE COURT: Can you give me a statutory or any other

1 legal basis showing that you're entitled to an award of  
2 attorney's fees; statutory, contractual, any basis?

3 THE COURT: Your Honor, I guess what I would indicate  
4 -- and I don't have the code section just right at the top of  
5 my head, but I know that there is a section that talks about if  
6 there is a prevailing party in an action. I'm not saying that  
7 we've prevailed totally; but we have been able to move forward  
8 with the case, and convince the Court that the things that were  
9 done were inappropriate, and that Mr. Manzanares should have an  
10 opportunity to object to the adoption.

11 Mr. Manzanares, again, has been compliant with all of  
12 the Court's orders. He's been present at every single hearing;  
13 and we believe that because he has substantially prevailed thus  
14 far on the motions and the things before the Court, that that  
15 would be a basis -- and I apologize, I don't have the code  
16 section memorized or available to me right now, but I could  
17 provide that to the Court.

18 THE COURT: Okay, and visitation?

19 MS. REYES: Your Honor, with regard to visitation --  
20 let me just grab that other -- your Honor, I would note that  
21 the request for visitation, as far as I understand, is not --  
22 has been unopposed by the petitioners. I don't think there's  
23 been any response or objection filed by them opposing a request  
24 for visitation.

25 THE COURT: Has there been any agreement reached? You

1 said there was something that happened just yesterday, there  
2 was a response or something?

3 MS. REYES: Your Honor, I re -- I received a faxed  
4 letter from petitioner's Counsel, which merely indicated that  
5 the reason why they haven't responded to our several requests  
6 for parent time that were issued clear back in January and  
7 in February, was because they feel like the 40 minute visit  
8 with Mr. Manzanares' daughter caused her to have significant  
9 distress thereafter, and they wanted to wait for further  
10 hearings and see what happened with the Court.

11 I may be paraphrasing that. I could actually read  
12 it, if Mr. Jenkins prefer, I could actually read it into the  
13 record; but that's kind of the gist of it. That they just --  
14 they didn't see that it would be beneficial to the child to  
15 have any type of further visits, and they were going to be  
16 kind of waiting to see what the Court was going to do.

17 So there has been attempts -- at least Mr. Manzanares  
18 has made several attempts to try and set up something. I  
19 requested I think in the letters that were sent to petitioner's  
20 Counsel that we just set that up through Counsel; and that he  
21 was willing to travel to Utah to visit the child and --

22 THE COURT: Are you proposing any sort of schedule?

23 MS. REYES: Your Honor, my client at this point in time  
24 is willing to do whatever it takes to be able to have visits  
25 with his daughter. Obviously he's here today. If there can be

1 anything scheduled while he's in Utah here today; but he would  
2 like to try and establish a bond with this child.

3           You know, he believes that at that -- at that meeting,  
4 I mean, that -- his proffer of testimony would be that at the  
5 meeting that was held between him and his daughter in December  
6 was precious, and the child didn't exhibit, at least at that  
7 -- that meeting any distress. The child did get a little fussy  
8 at the end; but it was disclosed by the petitioners that, you  
9 know, she was tired. It was kind of nap time, and she was  
10 actually starting to fall asleep on Mr. Manzanares' chest.  
11 So --

12           THE COURT: Tell me how that took place. Was it  
13 supervised, unsupervised, was it at a home --

14           MS. REYES: Mr. Manzanares --

15           THE COURT: -- what happened?

16           MS. REYES: Your Honor, it was actually just outside  
17 the courtroom here. The child was present. The Court ordered  
18 that the child be present at the hearing, and my client, you  
19 know, he would hope this not be the case, but he believes  
20 the only reason why that visit occurred is because the Court  
21 required the child be present. If the child had not been  
22 present, there would have been no attempts or agreement to  
23 have the child visit with the father.

24           That just occurred right outside the Court forum  
25 here in one of the conference rooms; and the parties that

1 were present were Mr. Manzanares and his parents, and then  
2 the petitioners were in there, as well as their attorney who  
3 was present. I was actually in the room as well. So there  
4 was quite a few people in a small room. So that may have been,  
5 you know, something that made it a little less uncomfortable.

6 My client would indicate that the time he spent with  
7 his daughter, his testimony would be, that it was a beautiful  
8 experience, even though, you know, he would have rathered it  
9 be in a less structured setting; and that the child reacted  
10 well to him.

11 Again, at the very end the child became a little  
12 fussy, but it was because she was attempting to fall asleep.  
13 I mean, she was laying on his chest at a point in time with her  
14 eyes closed.

15 So he feels like there's been no detriment to the  
16 child; and because everyone acknowledges he's the biological  
17 father, then he should be entitled to some contact with his  
18 daughter. Also, the Court in Colorado -- I don't know, did  
19 the Court have a question?

20 THE COURT: (No verbal response).

21 MS. REYES: I didn't mean to cut -- okay. The Court  
22 in Colorado has issued an order entitled, "Final Order for  
23 Paternity," dated February 29<sup>th</sup> of '08, wherein it specifies  
24 "Petitioner Robert Manzanares is the biological father of the  
25 child, and has all of the legal rights and responsibilities he

1 is entitled by law to the child."

2           So according to the paternity action in Colorado, you  
3 know, he should be receiving parent time. He has the rights.  
4 He has the duty to support, and he should have the right to  
5 visit with the child.

6           THE COURT: What about the mother?

7           MS. REYES: Your Honor, and what we would indicate with  
8 regard to the mother is because of this unique circumstance,  
9 because she chose to place the child with a family member,  
10 she's had unfettered access to this child. I don't believe  
11 that her brother has put any restrictions on her ability to  
12 visit with her daughter.

13           If she hasn't visited with her daughter, we would  
14 indicate it's because of her non-desire or her unwillingness  
15 to make the efforts and the trips to Utah; and I would note  
16 that she's not here today present.

17           So the mother, you know, if -- the way my client sees  
18 this is, you know, ultimately his hope and desire is that, you  
19 know, he will have custody of his daughter some day; but if it  
20 turns out that, you know, the mother has the custodial right to  
21 the child, you know, she needs to be creating a bond with this  
22 child as well. He doesn't have any opposition to Ms. Terry  
23 visiting his daughter. He thinks that that's what a mother --  
24 you know, a mother should be mothering the child, not be a  
25 visitor in the child's life.

1           So Mr. Manzanares is willing to do whatever the Court  
2 feels is appropriate. He would obviously like to -- you know,  
3 I think he would acknowledge that the first, you know, visits  
4 that occur probably need to be some type of phase in and maybe  
5 some supervised -- supervision there. I mean, not that there's  
6 -- he has any harm or detriment to the child, but just -- just  
7 for the child's sake; but then as time goes on, that these be  
8 phased in.

9           The ultimate goal is to try and get this matter  
10 resolved efficiently and promptly; but if it's set out -- if  
11 the Court is going to hold a hearing, an evidentiary hearing on  
12 the issue of custody and it's set out several months, he would  
13 request, you know, visits with his daughter.

14           I think under the Utah code, an non-custodial parent,  
15 you know, would be entitled to -- I'd have to look at the age  
16 of the child, but I know it would be at least, with the age of  
17 this child, she's -- she's over one year of age, soon to be --  
18 I guess 18 months hasn't quite gotten here, but I believe it  
19 would be either between nine hours of parent time per week,  
20 with another eight hour visit on the weekend; or it would  
21 actually roll over into a weekend period where it would begin  
22 from Friday at 6 until a Sunday at 7, and then a midweek.

23           Again, as hard as that would be for my client, because  
24 he does have work obligations and whatnot outside of the state,  
25 he will make any, you know, accommodations to be here to visit

1 with his daughter. That's his focus right now.

2 THE COURT: Thank you. Anything else on those motions?

3 MS. REYES: Yeah, if I can -- just a moment.

4 THE COURT: Sure.

5 (Counsel conferring with respondent off the record)

6 MS. REYES: Your Honor, just to clarify, I had to  
7 speak with my client about the visitation, and he said that,  
8 you know, that obviously the more time he can get with his  
9 daughter, the better. He will make whatever arrangements are  
10 necessary. You know, weekends would probably work best, just  
11 because of his work obligations. He does want to continue to  
12 be able to support his daughter. So, you know, keeping his job  
13 is an issue, but he would make efforts to be here.

14 So he would just ask the Court to consider some  
15 substantial time, starting immediately, with his daughter,  
16 so that, you know, this desire to have a bond with her and  
17 whatnot can move forward. So with regard to those issues I  
18 don't believe I have anything further. Then we just have the  
19 order to show cause to deal with. So I'll defer to Mr. Jenkins  
20 and other Counsel.

21 THE COURT: Thank you.

22 MR. JENKINS: Good afternoon. May it please the Court,  
23 I think it's important for us to step back and remember where  
24 this case is at both procedurally and legally. The issue that  
25 was on the table at the July evidentiary hearing was whether

1 Mr. Manzanares had preserved his rights. Then in the August  
2 memorandum decision the Court chose to deal with the different  
3 issue, that of Ms. Terry's consent.

4 At page 19 of the memorandum decision the Court said  
5 -- the Court, quote, "vacated Judge Hilder's acceptance of  
6 Ms. Terry's consent," closed quote. Court also noted on that  
7 page that Ms. Terry could refile her consent.

8 After that, on the same page, the Court wrote that  
9 Mr. Manzanares' -- about Mr. Manzanares' rights, that it was,  
10 quote, "not prepared to say whether Mr. Manzanares had taken  
11 the appropriate steps to preserve his rights in Utah. The  
12 Court will say that while the Colorado action may be a basis  
13 for preserving his rights in Colorado, it does not appear that  
14 he has taken any such steps in Utah," closed quote.

15 At page 18 of that same memorandum decision, the Court  
16 wrote that it's decision at the time would not allow dismissal  
17 of the adoption petition, or an automatic grant of custody to  
18 Mr. Manzanares.

19 Now, the Court also issued the January memorandum  
20 decision, but it really didn't change these rulings. It  
21 granted Ms. Terry's motion to intervene, and essentially  
22 clarified some of the issues from the August decision. I  
23 think Ms. Reyes has identi -- certainly identified the section  
24 of the adoption code that's governing here what the procedure  
25 is that we have to go through before arriving at a decision to

1 dismiss the adoption decision.

2           As she indicated, first the Court needs to conclude  
3 whether Mr. Manzanares' consent is required. By the express  
4 terms of the August decision, that issue is yet to be resolved.  
5 Second, the Court needs to determine whether proper grounds  
6 exist to terminate Mr. Manzanares' parental rights under either  
7 the adoption act or the termination of parental rights act.  
8 Obviously this step hasn't been taken. I'll talk about that a  
9 little bit more later as well.

10           Finally, if the Court finds that both Mr. Manzanares'  
11 consent is required and that no grounds exist to terminate  
12 his parental rights, then the Court must dismiss the adoption  
13 proceeding and hold an evidentiary hearing on the issues of  
14 visitation and temporary custody.

15           Now, the Supreme Court has actually elaborated on  
16 this section of the adoption code; and I'll discuss that case  
17 a little more in detail. They issued that about two-and-a-half  
18 years ago in a case that I unfortunately became very familiar  
19 with after the Court issue its decision.

20           I think importantly, if we look at Section 78(b)-6-  
21 133, the procedure outlined therein is, is that if the adoption  
22 petition must be dismissed because Mr. Manzanares' consent is  
23 required and his rights can't otherwise be terminated, that's  
24 then the only place where it confers upon the Court the power  
25 to look at custody and visitation issues otherwise. I'll

1 talk about that a little bit later as well. I just wanted to  
2 outline kind of where I was going.

3 I think that we need to follow those steps, it's  
4 pretty clear from the outline of the statute itself. First  
5 of all, let me address whether Mr. Manzanares' consent is  
6 required. As I indicated in the August decision the Court  
7 wrote, "It does not appear that Mr. Manzanares has taken any  
8 steps in Utah."

9 I just want to go back through the facts briefly,  
10 of what the facts were in August when the Court issued that  
11 decision. Before the child was born, on January 16<sup>th</sup>, 2008,  
12 Mr. Manzanares filed paternity action in Colorado specifically  
13 stating that he believed Ms. Terry planned to flee to Utah to  
14 proceed with an adoption."

15 I think I used this chart at the hearing back in July.  
16 He specifically said in that petition that Ms. Terry planned to  
17 flee to Utah to proceed with an adoption. Twice again after  
18 that Mr. Manzanares made similar statements and filings in the  
19 Colorado Court before the child was placed for adoption.

20 On February 15<sup>th</sup>, 2008, Mr. Manzanares filed a brief  
21 stating that "Birth mother," quote, "is planning to give birth  
22 in Utah, and place the parties' unborn child for adoption  
23 possibly with the help of the Mormon Church," closed quotes.

24 Then he also made reference to Utah again in his  
25 February 19<sup>th</sup> response -- or excuse me, his reply to Ms. Terry's

1 response to the paternity petition over there. So we know the  
2 child was born in Utah, and on February 20<sup>th</sup>, 2008 Ms. Terry  
3 executed a consent before Judge Hilder.

4 As of February 20<sup>th</sup>, 2008, Mr. Manzanares had taken no  
5 action in Utah, even though more than a month earlier he had  
6 stated his concern that Ms. Terry would flee to Utah to proceed  
7 with an adoption. Then later in the month of February or early  
8 March, Mr. Manzanares obtained from the Colorado Court an order  
9 adjudicating him to be the father of Ms. Terry's baby.

10 There really aren't any material changes in facts that  
11 have occurred since the August decision. Mr. Manzanares had  
12 filed a paternity action in Utah. He's gotten on the registry  
13 in Utah, and he didn't do that until after the Court's August  
14 decision.

15 Now, I do want to clarify one thing that Ms. Reyes  
16 indicated. She said that he had filed a voluntary declaration  
17 of paternity, but under the Uniform Parentage Act, a voluntary  
18 declaration of paternity requires the signature of the mother  
19 as well. There has been no voluntary declaration of paternity  
20 that's been filed in Utah. The particular code at 78(b)-15-302  
21 requires the mother's signature on a voluntary declaration of  
22 paternity.

23 THE COURT: That's 78(b) --

24 MR. JENKINS: It's 78(b)-15-302.

25 THE COURT: Thank you.

1           MR. JENKINS: The voluntary declaration of paternity  
2 essentially establishes a person as the legal father just as  
3 if they had been married. That's why it requires the mom's  
4 consent on a voluntary declaration of paternity. There has  
5 been no such document filed in Utah, nothing has been produced,  
6 and I can't imagine that Ms. Terry would have executed that  
7 with him. He is on the registry in Utah, and like I said, as  
8 Ms. Reyes indicated, that occurred in September.

9           The first issue in evaluating whether Mr. Manzanares'  
10 consent is required is what he had to do. As Ms. Reyes walked  
11 us through, part of what depends whether a non-resident birth  
12 father is required to comply with Utah law is whether he is  
13 aware of a qualifying circumstance before the child is placed  
14 for adoption. She walks through some of those with us, Section  
15 122 of the adoption act.

16           You know, as far as several of the facts -- and I  
17 apologize it's so small. I can bring it up a little closer.  
18 Could -- no, I can't even see it from here if I look at it; but  
19 several of these qualifying circumstances certainly exist in  
20 this case.

21           Whether the first one, that the child or the child's  
22 mother resided on a temporary -- permanent or temporary basis  
23 in the state, whether that one exists or not is irrelevant,  
24 because we're dealing with an "or." Ms. Terry testified at  
25 the hearing in July that she intended to give birth in Utah.

1 She said that's why she was coming out in February was to talk  
2 to doctors and scope it out and see, because she wanted to come  
3 here in March to have her baby.

4 THE COURT: Wasn't the testimony also that she didn't  
5 intend to give birth at that time, Mr. Jenkins?

6 MR. JENKINS: That's right.

7 THE COURT: And that it was premature?

8 MR. JENKINS: That's right, but she didn't -- but she  
9 didn't intend to give birth in Utah; and she testified to that  
10 effect. She never intended to give birth in Colorado. The  
11 child was born in this state, and she -- and there apparently  
12 was a consent to execute an adoption in this state, which is  
13 the fourth one there. So as I indicated, several of those  
14 qualifying circumstances actually exist in this case.

15 Where the key comes in, though, is what Mr. Manzanares'  
16 knowledge was of that information. What the statute further  
17 says is if the unmarried biological father knew, or through the  
18 exercise of reasonable diligence should have known before the  
19 time the mother executed the consent to adoption or relinquish-  
20 ment of the child that a qualifying circumstance existed, then  
21 he must comply with the requirements of the Utah statute.

22 I think the information that Mr. Manzanares put in his  
23 petition in Colorado shows that he certainly was aware of at  
24 least the issues that we've talked about. He stated right out  
25 on February 15<sup>th</sup> that she planned to come to Utah, have her baby

1 and place the baby for adoption. On January 16<sup>th</sup> he said he had  
2 a founded concern that she -- she may flee to Utah and place  
3 her baby for adoption. So it seems to me that he certainly was  
4 aware of that.

5           Recently, just in February of this year, the Utah  
6 Supreme Court discussed what level of knowledge a non-resident  
7 birth father has to have to trigger the application of Utah  
8 law. They did it when analyzing the prior statute; but the  
9 language of the prior law and the current law is fairly similar  
10 as far as the level of knowledge that the father needs to have.

11           The prior statute said that Utah law would not apply  
12 if, quote, "the unmarried biological father has through every  
13 reasonable means attempted to locate the mother, but does not  
14 know or have reason to know that the mother is residing in the  
15 state of Utah."

16           In the HUF vs. WPW case which was issued on February  
17 10<sup>th</sup> of this year, the Court wrote that, quote -- that the  
18 statute, quote, "requires only that a putative father have  
19 reason to know that a birth mother was residing in Utah, not  
20 that he have actual knowledge," closed quote.

21           In that case, the birth mother testified in an Arizona  
22 proceeding -- or excuse me, the birth father testified in an  
23 Arizona proceeding that the birth mother told him she had moved  
24 to Utah. The Court said that was enough, even though just a  
25 week later the birth mother told the birth father in an email

1 that she had not moved to Utah.

2 So even though there was inconsistent information from  
3 the birth mother about whether or not Utah was involved in her  
4 plans, the Court said that he was on notice that she may be in  
5 Utah, and the Court said that was enough.

6 THE COURT: Is it may be in Utah, or residing in Utah?  
7 Because I don't think we have a residency issue in this case,  
8 do we?

9 MR. JENKINS: No, I don't think we have a residency  
10 issue in this case. Like I say, the statute -- the statute  
11 before talked about residing in Utah. That was the only --  
12 only exception before.

13 THE COURT: So this case is talking about a residency  
14 requirement?

15 MR. JENKINS: It's just talking -- I guess it is just  
16 talking about a residency requirement, but like I say, it's  
17 talking about the level of knowledge about what she has --

18 THE COURT: For a residency.

19 MR. JENKINS: For a residency, absolutely.

20 THE COURT: Okay.

21 MR. JENKINS: But when you apply the level of knowledge  
22 requirement that the Court put onto the new statute that was  
23 adopted in 2006, if we're talking about whether he, through the  
24 exercise of reasonable diligence --

25 THE COURT: Did they --

1 MR. JENKINS: -- could have known.

2 THE COURT: Did they equate in that opinion that the  
3 same level of knowledge is to be applicable to the new statute?

4 MR. JENKINS: Your Honor, I agree that they weren't  
5 addressing the new statute. They were addressing circumstances  
6 under the old statute.

7 THE COURT: Okay, so --

8 MR. JENKINS: I don't think there's been a case that  
9 has looked at this new statute yet.

10 THE COURT: Oh, okay. So is there any -- is there  
11 any indication that you have of what you -- is it just your  
12 argument, then, that that's the level that --

13 MR. JENKINS: Just --

14 THE COURT: -- what it would be --

15 MR. JENKINS: Just my argument when you look at the  
16 statutes, the prior statute and the current statute, and they  
17 have similar language in about the level of knowledge that a  
18 father has to have. It's kind of a reason to believe statute,  
19 reason to know statute.

20 THE COURT: So you're focusing in on the knowledge  
21 component, rather than the residency component?

22 MR. JENKINS: Absolutely. Absolutely.

23 THE COURT: All right.

24 MR. JENKINS: Yeah, I -- we don't need the issue this  
25 -- you know, the Court's talking here on the first one here,

1 that this is just one of the qualified circumstances. You  
2 don't have to have all four.

3 THE COURT: Right.

4 MR. JENKINS: You have to have one of the four. I can  
5 get rid of the first one and say I don't care if Mom's in Utah  
6 or not as a resident, but I think the others are here, and I  
7 think the others are satisfied by his own statement that in --  
8 when he said in the paternity petition that Mom will flee to  
9 Utah where she has family to proceed with an adoption plan, and  
10 that is planning to give birth in Utah and place the parties'  
11 unborn child for adoption possibly with the help of the Mormon  
12 Church.

13 It seems to me he's saying, you know, that Ms. Terry's  
14 going to go to Utah, and she's going to place this baby for  
15 adoption. To me that suggests that he has a -- see, you can  
16 go through the -- at least, at the very least, through the  
17 exercise of reasonable diligence, should have known that one  
18 of these qualifying circumstances existed. That's all I'm  
19 arguing. I'm not saying she was a resident of Utah. Like I  
20 say, I don't think I need that to get where I'm going.

21 My argument is he did have a reasonable -- well, let's  
22 just say he should have known under the statute that there  
23 was a qualifying circumstance that existed, based on his own  
24 admissions that he filed in the Court in Colorado.

25 The question then becomes when did Mr. Manzanares

1 need to comply with the law. The statute says that he needs  
2 to comply with Utah law, but the later of -- either 20 days  
3 after he gained that knowledge, which I think the Court could  
4 probably peg back to January 16<sup>th</sup> with his first filing, or the  
5 time the mother executed a consent to adoption or relinquish-  
6 ment of the child for adoption.

7           Now, I think it's clear that Mr. Manzanares did not  
8 comply with Utah law within the 20 days after he filed his  
9 paternity petition, or even 20 days after the February 15<sup>th</sup> or  
10 February 19<sup>th</sup> statements that he filed in Court. As the Court  
11 indicated in August, he still hadn't complied with Utah law in  
12 August. "I think the question then becomes whether he complied  
13 with Utah law before both the mother executed a consent to  
14 adoption," closed quote.

15           Ms. Terry executed a consent to adoption on February 20  
16 of 2008; and it's undisputed that by that date Mr. Manzanares  
17 had not complied with Utah law. The Court wrote in its August  
18 decision that it, quote, "does not appear that he's taken any  
19 such steps in Utah," closed quote. I think this is precisely  
20 the case. He had not taken any of those steps before the  
21 August memorandum.

22           Now, Ms. Terry executed a consent in February.  
23 Judge Hilder accepted it, acknowledged its efficacy a few  
24 days -- several days later when he learned of the Colorado  
25 paternity action. Now that this Court has, quote, "vacated

1 Judge Hilder's acceptance of Ms. Terry's consent," closed  
2 quote, does not change the fact that she signed a consent on  
3 February 20 of 2008.

4 In the same paragraph where the Court vacated Judge  
5 Hilder's acceptance of the consent, the Court said Ms. Terry  
6 could re-file the consent. Black's Law Dictionary says that to  
7 vacate something means essentially to set it aside; and that's  
8 the language the Court used in the memorandum decision. Yet,  
9 setting it aside essentially means that it was done in the  
10 first place.

11 Vacating something doesn't have the same meaning as if  
12 the action itself were void at the time it happened, meaning it  
13 had no legal effect to begin with. What I'm getting at is that  
14 Ms. Terry signed a consent to adoption on February 20<sup>th</sup>. It was  
15 effective until the Court vacated Judge Hilder's acceptance of  
16 the consent; but that doesn't mean that she never executed it.

17 Indeed, 25 years ago the Supreme Court wrote in the  
18 Wells' case that I think we cited in some of our briefing  
19 that, quote, "The State has a compelling interest in speedily  
20 identifying those persons who will assume a parental role  
21 over newborn illegitimate children. Speedy identification is  
22 important to immediate and contingent physical care, and it is  
23 essential to early and uninterrupted bonding between parent and  
24 child."

25 That Court upheld the putative father provisions of

1 the adoption statute as furthering this compelling reason had  
2 stated, and has continued to uphold those provisions several  
3 times over the years. Now, these compelling interests are  
4 now actually written into the statute, which requires strict  
5 compliance by unmarried fathers. The statute also places  
6 the burden squarely on unmarried fathers to insure strict  
7 compliance, even in the face of fraud or misrepresentation  
8 by the birth mother or other parties.

9 Now, to further the compelling State interest embodied  
10 in the statute, I believe the statute needs to be applied to  
11 Mr. Manzanares as it is written. He was required to strictly  
12 comply. I think that the statute should be read strictly in  
13 applying it.

14 Our position is that his compliance with Utah law  
15 was required because before the baby was placed for adoption,  
16 he obtained knowledge that Ms. Terry may deliver and place her  
17 child for adoption in Utah. He didn't comply by the time she  
18 actually signed her consent. To move the time for compliance  
19 to sometime in the future does very little to promote the  
20 interests of the State or the rights or the interests of the  
21 child.

22 Mr. Manzanares argues that his consent is required  
23 because the Colorado paternity order that was entered last --  
24 end of February last year or early March found him to be the  
25 child's father. You know, one problem with this analysis is

1 that the Colorado paternity order was admitted into evidence  
2 at the July hearing, and it was known to the Court; and yet  
3 the Court specifically ruled in August that it didn't have  
4 grounds then to dismiss the adoption petition.

5           If it didn't have grounds then, the facts have not --  
6 have not changed. I think that suggest a different analysis of  
7 the adoption statute may have been contemplated by the Court,  
8 and I think the analysis that I've suggested is an appropriate  
9 analysis.

10           Now, if the Court gets to these arguments and concludes  
11 that Mr. Manzanares is -- his consent is required, then Section  
12 78(b)-6-133 next requires that the Court to determine whether  
13 grounds exist to terminate Mr. Manzanares' rights.

14           Understandably, the issue has not been broached by the  
15 parties of the Court, because the Court has never determined  
16 that Mr. Manzanares' consent is required yet. In fact, at the  
17 July hearing the Court expressly ruled it wasn't going to go  
18 into those issues until it had made a determination on the  
19 issue of consent.

20           We tried to have Ms. Terry testify about some of her  
21 concerns and issues with Mr. Manzanares, and the Court wouldn't  
22 let us go there because we hadn't gotten to that issue yet.  
23 Whether we pleaded grounds for termination of parental rights  
24 in the adoption petition or not is really beside the point,  
25 because the statute specifically requires that the Court look

1 at those issues.

2 I submit that given the complexities, the uniqueness of  
3 the case, if the Court is inclined to find that Mr. Manzanares'  
4 consent is required, I think the Court owes it to the parties  
5 to detail that in a written ruling so that there's no question  
6 what the Court means or intends. So the Court's ruling is  
7 clear from appeal which petitioners certainly intend to take.  
8 I think at that point the Court can then consider whether there  
9 are grounds to terminate Mr. Manzanares' parental rights.

10 Let me get to the question of what happens if the  
11 Court does determine that Mr. Manzanares' consent is required  
12 and also determines there is not grounds to terminate his  
13 parental rights. If I may approach, I have a copy of the case  
14 in Nevada, the adoption of PN.

15 THE COURT: Thank you. If you would, thank you.

16 MR. JENKINS: I provide that for the Court and Counsel's  
17 reference. It does actually go into some detail about what  
18 happens under this contested adoption provision, Section 133  
19 that we're talking about.

20 Ms. Reyes is absolutely correct that the Supreme Court  
21 looks at this sec -- at this section as providing only the  
22 right of the Court that's hearing the adoption to grant some  
23 kind of temporary order.

24 THE COURT: On custody?

25 MR. JENKINS: Pardon? On custody?

1 THE COURT: Custody.

2 MR. JENKINS: Well, and visitation is also contained in  
3 that section as well. It's the only place in the adoption code  
4 where there's a grant of any right for the Court to determine  
5 custody or visitation.

6 What the Court did is it looked at a situation, and it  
7 had a very similar situation to this -- this one where it's  
8 talking about a -- there would be a custody battle between two  
9 biological parents once the adoption proceeding's over. It  
10 noted that a temporary custody order was likely appropriate in  
11 a situation like that; and they actually said that the child in  
12 that case should remain with the prospective adoptive parents  
13 pending -- following the procedures; and they outline that --  
14 it starts kind of with paragraph 17 towards the end.

15 What the Court also wrote that, quote, "Temporary  
16 custody may be necessary when a transitional period is needed  
17 so that the child can become reacquainted with his parent when  
18 little contact has occurred during the adoption proceedings,"  
19 close quote.

20 In PN, because the child had been with the adoptive  
21 parents for about two years when the decision was finally  
22 rendered in the Supreme Court, the Court ordered that the  
23 child remain with the prospective adoptive parents in the  
24 short run, but then it also suggests -- it told the biological  
25 parents the procedure that they needed to file -- or follow,

1 which was that each of them needed to commence their own  
2 custody petition, which the Court said were essentially  
3 separate proceedings from the adoption proceeding.

4           The Court kind of indicated that the temporary orders  
5 of visitation and custody was simply a bridge until the issues  
6 could be dealt with in the permanent proceedings. I guess the  
7 point I'm making, I don't know that the Court needs to defer to  
8 the Colorado Court, because I think the statute says the Court  
9 does need to look at the issue of visitation and custody when  
10 it dismisses the adoption petition. Order-wise, I'm not sure  
11 what the order would be.

12           I will note that I do recall now having read the  
13 record in the PN case -- I wasn't there, but I've read it  
14 -- and Judge Lubeck in that case, he held the -- he did not  
15 dismiss the adoption petition until he had completed the  
16 evidentiary hearing.

17           So I don't know if that helps the Court or not. That's  
18 the way Judge Lubeck did it in that case. I think the Court  
19 is right, the statute doesn't say, and I think that you do run  
20 into the question how do you deal with jurisdiction if you've  
21 already dismissed the adoption petition.

22           I think it's important to note in the PN decision  
23 that the Supreme Court furth -- also wrote that the biological  
24 parents needed to name the prospective adoptive parents as  
25 parties to their custody proceeding, so that they could be

1 required to produce the child. I thought that was interesting.

2           The Court further wrote that the child's bonds with  
3 the prospective adoptive parents, quote, "must not be ignored  
4 or minimized," and told the parties to seek professional  
5 assistance to make the transition as smoothly as possible for  
6 the child.

7           So I think it's a helpful case. It's not very long  
8 and it doesn't go into a lot of detail, but I think it is a  
9 very helpful case to show that, number one, that, you know,  
10 the proceeding -- the evidentiary hearing is to deal with  
11 a temporary order. Then it's up to the biological parents  
12 whether they file permanent custody petitions or not.

13           As Ms. Reyes has indicated, Mr. Manzanares has filed  
14 one in Colorado. Ms. Terry possibly could do the same. I'm  
15 not her Counsel. I'm not going to tell her what to do; but  
16 the function of this Court appears under the PN case to be  
17 something to provide that bridge, simply.

18           Now, there's one fact that doesn't exist in the PN  
19 case that we have in this case; and it's something I think the  
20 Court will need to consider at some point. Once the Supreme  
21 Court ruled in the PN case, that was the end of the road for  
22 the prospective adoptive parents. The reason being is when  
23 Judge Lubeck dismissed the adoption petition, they didn't  
24 appeal that.

25           So the dismissal of their adoption petition wasn't

1 before the Supreme Court. Thus, in that case all the Supreme  
2 Court could do was talk about what happens now that the  
3 adoption petition is gone, and we've got two biological  
4 parents whose rights can't be terminated.

5 In this case if the adoption petition is dismissed, the  
6 petitioners will certainly immediately appeal that dismissal,  
7 and seek to have the appeal expedited. They'll certainly  
8 seek to stay any custody order that the Court may enter that  
9 transfers custody of the child from them, and certainly will  
10 ask the Court of Appeals to stay any such order.

11 I think in this context where the adoption petition  
12 could be reinstated after an appeal, that's another fact that  
13 certainly needs to be taken into account in determining custody  
14 and visitation issues, both in the short run and in the long  
15 run, I think.

16 Certainly the Byingtons need to remain a part of this  
17 child's life, and given attachment and bonding issues, they  
18 probably should remain the primary care givers if there is an  
19 appeal that needs to be taken at some point.

20 I think the key point of the PN case, and Section 133  
21 of the adoption statute notices that visitation and custody  
22 jurisdiction only come to the Court in an adoption proceeding  
23 when the Court determines that it needs to dismiss the adoption  
24 petition, and then only following evidentiary hearing on the  
25 issues.

1           As far as the other issues that you -- I believe  
2 the only issue I haven't addressed is the issue of attorney  
3 fees. I would note, your Honor, that there is no statutory or  
4 contractual basis for an award of attorney fees in this case,  
5 and our position would be that it wouldn't be merited. Unless  
6 the court has any questions, I'll turn the time to Mr. Hardy.

7           THE COURT: Well, I guess I do. What would your -- you  
8 know, maybe we're ahead of ourselves, but there is a motion for  
9 the visitation. You're saying any discussion that visitation  
10 is or should be is premature at this point?

11           MR. JENKINS: That's part of the evidentiary hearing,  
12 is our position there.

13           THE COURT: Thank you.

14           MR. HARDY: Your Honor, may it please the Court, as I  
15 mentioned earlier, David Hardy on behalf of the intervener,  
16 Carrie Terry. It is not my purpose to re-plow ground that  
17 Mr. Jenkins has already dealt with. So I'll be brief. Just  
18 wish to make a few points relative to my client, Ms. Terry,  
19 and her position in this matter.

20           It is Ms. Terry's position and feeling that the  
21 adoption should not be dismissed, that the motion to dismiss  
22 should be denied, effectively for the reasons given by  
23 Mr. Jenkins. I would note that her relinquishment given on  
24 the 20<sup>th</sup> of February last year, as we have argued previously,  
25 was given freely, was given voluntarily, was given knowingly.

1 It was done at her request and her desire, and it has been  
2 her consistent desire that that remain in place, and thus  
3 the opposition to it being -- it being vacated.

4 It is further her position that any subsequent  
5 relinquishment should relate back to February 20<sup>th</sup>, making  
6 that the effective date by which Mr. Manzanares should have  
7 complied with the requirements of Utah statute, and which  
8 he did not -- by that date he had not complied with the  
9 requirements of the Utah statute. It is our feeling that  
10 the relinquishment was a valid relinquishment, and therefore  
11 any subsequent relinquishment should relate back, because it  
12 arises from the same circumstances.

13 THE COURT: Has she done any subsequent relinquishment  
14 that the Court is not aware of?

15 MR. HARDY: She has not done any subsequent relinquish-  
16 ment, based primarily on the ongoing proceedings here, wanting  
17 to see where things go; but, as I said, then Mr. Jenkins went  
18 through the argument as to -- as to why Mr. Manzanares' consent  
19 is not necessary for the adoption. So on that basis our feeling  
20 would be that the petition for adoption should not be dismissed  
21 and should be allowed to go forward.

22 If the Court determines that Mr. Manzanares' consent  
23 is required, it is Ms. Terry's preference that all issues  
24 relative to custody and visitation be addressed by the Court  
25 in Colorado, as opposed to the Court here. Based on the

1 statute, I think that -- and Mr. Jenkins went through this.

2 Both Ms. Reyes and Mr. Jenkins have gone through the statute.

3 I think that any -- any order at this point with  
4 respect to custody is premature. There either needs to be  
5 an evidentiary hearing here in this Court relative to those  
6 issues; or it is our feeling that this Court can defer -- can  
7 discharge its obligation to conduct its evidentiary hearing --  
8 can defer to the Court in Colorado and allow it to proceed on  
9 issues of custody and visitation.

10 I think one of the important things --

11 THE COURT: Even though the statute says the Court  
12 shall?

13 MR. HARDY: I think -- I think the Court --

14 THE COURT: (Inaudible).

15 MR. HARDY: -- the language -- the language that the  
16 "Court shall" will, in a situation such as this, permit the  
17 Court to defer to a Court which also has jurisdiction over  
18 the child.

19 THE COURT: But does the Court in Colorado have  
20 jurisdiction?

21 MR. HARDY: I believe that the Court does. I think  
22 both Courts --

23 THE COURT: Why?

24 MR. HARDY: -- have jurisdiction over the child, based  
25 upon the residency of the parents, the biological parents. I

1 think on that basis, Colorado would have jurisdiction over the  
2 child, and could proceed. I think either state could proceed.

3           The Colorado Court has, in this case, deferred to  
4 this Court as far as the adoption proceedings; but I think  
5 if this Court determines that the adoption petition should be  
6 dismissed, the Colorado Court could assert jurisdiction. Would  
7 be a question between the Courts. I think for that reason this  
8 Court should defer in that event.

9           A critical point, I think, on that issue is I think  
10 for the -- in the interests of the child, we -- what should  
11 be avoided is a situation where a child is going back and  
12 forth, where this Court may be entering a temporary custody  
13 or visitation orders at some point only to have it go back to  
14 Colorado for further proceedings, maybe a permanent award, and  
15 have a different ruling.

16           I think it is in the child's interest for there to  
17 be some consistency, some -- not to be treated as a ping-pong  
18 ball going back and forth between -- between parents. I think  
19 that argues strongly for -- in this situation, if this Court  
20 determines that dismissal is appropriate, to then defer to  
21 the Colorado Court for all issues with respect to custody and  
22 visitation.

23           The only other point I would make, your Honor, relative  
24 to attorney's fees, I think I concur with Mr. Jenkins that this  
25 is not a case where attorney's fees are appropriate, based on

1 the absence of any statute or contractual provision providing  
2 for attorney's fees.

3 THE COURT: Thank you. Ms. Reyes, Mr. Jenkins your  
4 comments on Counsel's argument that custody could be --  
5 determination could be -- could and/or should be transferred  
6 in its entirety to Colorado, rather than conducting a hearing  
7 as set forth in the statute.

8 MR. JENKINS: Well, it's a hard one to --

9 THE COURT: It may agree and may not agree. I don't  
10 know. I want to hear from all of you.

11 MR. JENKINS: No, I understand. I understand you.  
12 I will say that Mr. -- Mr. Hardy's comment that we certainly  
13 don't want the child bouncing back and forth and around, I  
14 think that makes a lot of sense; but I also believe the Court,  
15 with the guidance of an expert, or I would suggest if we do go  
16 to an evidentiary hearing at some point and we -- perhaps a  
17 Court appointed guardian ad litem will help guide the Court on  
18 the issues dealing with the child. I think in that kind of a  
19 situation we could avoid bouncing back and forth and around  
20 that may occur, but that's --

21 THE COURT: What about the issue of the jurisdiction  
22 and whether or not your opinion as to whether Colorado has  
23 jurisdiction over this child as well?

24 MR. JENKINS: That's a very interesting question.  
25 I understand his argument. I see where he's going. To be

1 honest, I don't think there have been any cases on the issue.  
2 The Supreme Court in the PN case said that this was not a --  
3 this custody hearing that the adoption statute required was  
4 not a typical child custody proceeding that we normally see.

5 I don't know what that means, whether that -- you  
6 know, if that's saying no, that, you know, it's a very  
7 different thing than what you could transfer to Colorado.  
8 I don't know the answer to that. It's a very interesting  
9 argument. I, too, would like to see the child -- make sure  
10 that she's not bouncing back and forth if that -- if it comes  
11 down to custody proceedings.

12 THE COURT: Your thoughts, Counsel?

13 MS. REYES: Your Honor, with regard to this issue,  
14 I've thought about this as we've all been talking, and the  
15 one thing that would be perplexing, thinking through this all,  
16 is if the Court were to dismiss the adoption petition and  
17 transfer jurisdiction of all matters to the Colorado Court for  
18 custodial determination, still because of the dismissal of the  
19 adoption petition, the petitioners would no longer have the  
20 temporary order of custody. So we'd have to determine what's  
21 going to happen with this child on a temporary basis.

22 I'm assuming the petitioners would -- position would  
23 be we'd just keep them until the Colorado Court -- keep the  
24 daughter until the Colorado Court makes the determination;  
25 but obviously my client wouldn't be comfortable with that

1 situation, and I wouldn't want there to be any possibilities  
2 of new actions being commenced on behalf of the petitioners to  
3 try and gain custody of the child here in Utah while they have  
4 cus -- you know, while the child is still in their care.

5           So I think that if the -- if the Court were to defer  
6 jurisdiction to Colorado, I still think at the -- at the time  
7 that the Court dismissed jurisdiction -- I mean, sorry,  
8 dismissed the petition, the Court would still have to enter  
9 some type of temporary order of custody to either mother or  
10 father, to insure this child gets back into Colorado, and the  
11 Court there would obtain, you know, personal jurisdiction over  
12 the child.

13           I would note that there has been an order issued by  
14 Colorado, specifically the final order for paternity dated  
15 February 29<sup>th</sup> of '08, where paragraph 1 says, "The Court has  
16 jurisdiction over the subject matter and persons." "Subject  
17 matter" being the minor child; "Persons" being Mr. Manzanares  
18 and Ms. Terry. "Herein, venue is proper because --" and it has  
19 the checklist -- "petitioner resides in this Count, respondent  
20 resides in this County, minor child unborn resides in this  
21 County." So I think there the Court in Colorado has in essence  
22 said, "We have jurisdiction over the child," although it does  
23 get complicated with the adoption petition pending here.

24           THE COURT: Didn't they lose jurisdiction when the child  
25 left in the womb and was born here? It's my understanding, is

1 it correct, that the child has never been in Colorado since  
2 it's been born?

3 MS. REYES: We're unaware of that. My client doesn't  
4 have any knowledge that the child's been transferred into  
5 Colorado for visits with any family members or anybody up  
6 there, but --

7 THE COURT: So has resided in Utah since its birth.

8 MS. REYES: Sure, but I guess -- I guess in the process,  
9 my client's fear would be -- and we'd want clarification --  
10 to insure that if the adoption petition is dismissed and the  
11 Court's inclined to transfer the issue of custody to Colorado,  
12 there still needs to be a mechanism of getting the child back  
13 with one of the biological parents and back into Colorado for  
14 that to effectuate.

15 THE COURT: All right, thank you. Do you want to go to  
16 your order to show cause?

17 MS. REYES: Okay. May I just respond briefly to a few  
18 things that were stated?

19 THE COURT: Oh, I'm sorry, yes. Mr. Jenkins, I didn't  
20 mean -- did you have anything else you wanted to comment on?

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

22 MS. REYES: Your Honor, if we look back at -- pardon  
23 me, with regards to the issue of whether or not Mr. Manzanares'  
24 consent is required, Mr. Jenkins spoke specifically about one  
25 of the provisions can be determined whether or not a birth

1 father's parental -- I'm sorry, consent is required.

2           Specifically he was looking at the section -- if you  
3 look at 78(b)-6-120, it talks about the different provisions  
4 which mandate the consent of a biological father. One of those  
5 is with regard to the 78(b)-6-121 and 78(b)-6-122 which talks  
6 about all these qualifying circumstances which was the main  
7 focus of Mr. Jenkins' argument.

8           Also I indicated to the Court under 78(b)-6-120, which  
9 is entitled, "Necessary consent to adoption or relinquishment  
10 for adoption," 78(b)-6-120, paragraph 1, subparagraph (d) says,  
11 "A biological parent who has been adjudicated to be the child's  
12 biological father by a Court of competent jurisdiction prior to  
13 the mother's execution of consent to adoption or relinquishment  
14 of the child for adoption."

15           Again, as indicated previous, because the Court vacated  
16 the consent of Ms. Terry in August of 2008, Mr. Manzanares had  
17 been adjudicated as the biological father of the child back,  
18 again, in February -- February 29<sup>th</sup> of '08. So that would have  
19 been, in essence, prior to the birth mother's consent. There  
20 hasn't been a subsequent consent executed.

21           So if you look at this Code Section 78(b)-6-120, which  
22 talks about necessary consent, it's not that you have to make  
23 a finding that subsection (d) applies, (e) and (f). Just one  
24 of those. So we would indicate that subsection (d) has been  
25 complied with, which mandates Mr. Manzanares' consent.

1           Then, again, if we go look at the qualifying circum-  
2 stance issue, they have this chart up here which notes some  
3 references that Mr. Manzanres made in pleadings; but I would  
4 also indicate to the Court that if you look at Mr. Manzanres'  
5 petition, verified petition for paternity, specifically in  
6 paragraphs 20 and 21, which state as follows -- let's see --  
7 paragraph 20 says, "Father is filing this petition prior to  
8 the child's birth because he has a serious and founded concern  
9 that although the unborn child will not be legally available  
10 for adoption, Mother plans to make the child available for  
11 adoption immediately upon his or her birth."

12           Then if you look at Ms. Terry's response, her verified  
13 response to that, in paragraph 20, she denies that. So any  
14 thoughts or any belief that Mr. Manzanres would have had at  
15 a point in time that this was a possibility, she denies that.  
16 So that alleviates any -- any reason for him to believe that  
17 this is true.

18           Then paragraph 21 of his verified petition states,  
19 "Father has serious and founded concerns that Mother will  
20 flee to Utah." Then it goes and talks about to proceed with  
21 an adoption, "Father therefore needs to establish immediate  
22 jurisdiction in Colorado, where the parties live, where the  
23 child was conceived prior to the child's birth." Again, you  
24 look at Ms. Terry's response to paragraph 21, and she denies  
25 that.

1           So for the petitioners and Ms. Terry to argue that he  
2 -- all he needs to have is reason to believe, her specifically  
3 denying that through a Court pleading alleviates any further  
4 reason for him to believe that this child may be made available  
5 for adoption specifically in Utah.

6           I would also note that the email which was accepted  
7 into evidence at the July hearing is an email dated January 11<sup>th</sup>  
8 of 2008 written by Ms. Terry to Mr. Manzanares, specifically  
9 talks about the issue of her coming to Utah on this occasion  
10 when she went into premature labor and gave birth to their  
11 daughter.

12           It says, "I will be flying to Utah to visit my father  
13 in February for a week." Then it has in parenthesis, "(maybe  
14 a little longer. It depends on how things or he are)." Then  
15 it goes on to say, "Then we'll be back to work to finish up  
16 the club's construction before I take time off at the end  
17 of March," my client assuming that that's when the baby was  
18 actually due.

19           "FYI, pregnancy is 40 weeks, not 35, as your letter  
20 assumes; and as previously discussed, this conversation  
21 causes me a lot of stress, and to avoid pre-term labor or  
22 other complications in April," it says, "I will be willing to  
23 sit down --" I'm sorry -- "In April I will be willing to sit  
24 down and talk with you about your reconsideration to consent  
25 for adoption. Otherwise this will be a long process and it

1 will benefit no one, especially this baby.”

2           So back in -- I’m sorry, I may have said November. I  
3 meant to say January 11<sup>th</sup> of 2008, this is when the email was  
4 sent to Mr. Manzanares. Again, she’s reassuring him that she’s  
5 going to Utah to visit her father, only. There’s no mention  
6 about go -- coming here with the intent to give birth to their  
7 child, to schedule a birthing plan.

8           Then it also says, “In April we’re going to sit down  
9 and discuss the possibilities of how we’re going to raise  
10 this child,” and she’s pursuing adoption. She knows he’s not  
11 willing to do that.

12           So whether or not -- the issue of reasonable belief  
13 that my client may have had with her contacts as it relates to  
14 the qualifying circumstances in Utah, I think can be alleviated  
15 by several things that she initiated.

16           Then just lastly, with regard to the motion for  
17 visitation, if you look at the Code Section 78(b)-6-120 --  
18 I’m sorry, not that. It would be 78(b)-6-133 that talks  
19 about contested adoptions, there’s nothing in the code that  
20 precludes the Court -- there’s nothing that’s been cited that  
21 would preclude your Honor from granting visitation pending a  
22 best interest hearing.

23           It says specifically 78(b)-6-133, paragraph 5, it  
24 says, “Any custody order entered pursuant to this section may  
25 also include provisions for parent time, biological parent.”

1 It doesn't say that parent time can only be addressed at the  
2 best interest hearing. It says it may be addressed, if it's  
3 requested by the parties.

4 So Mr. Manzanares has filed a motion, and it's been  
5 pending for several months now. There has been no position  
6 other than "We think it should be handled at the time of the  
7 best interest hearing;" but if the Court's inclined to go that  
8 direction and hold that hearing and it can't be set for several  
9 months, my client again is denied the right to have contact  
10 with his daughter.

11 There has been discussions about what type of rights  
12 the child may have and how that's best served with the State  
13 and whatnot, but I would indicate that this child has a right  
14 to have a relationship with her father. With her being minor,  
15 she has no control over how that's facilitated and how that can  
16 be accomplished. So we would indicate to the Court that it is  
17 appropriate for our motion for visitation to be determined  
18 today, and that there be some type of visitation set in place  
19 currently to allow Mr. Manzanares contact with his daughter.

20 THE COURT: Thank you. Order to show cause?

21 MR. JENKINS: It's her order to show cause.

22 MS. REYES: Your Honor, as the Court's aware, we've  
23 brought an order to show cause due to the fact that despite  
24 the numerous orders that have been issued from the Colorado  
25 Court and from this Court in its memorandum decision dated

1 August 20<sup>th</sup>, Mr. Manzanares' name has not been placed on the  
2 birth certificate.

3           Specifically there's been three orders issued by the  
4 Colorado Court. There has been an order dated February 29<sup>th</sup> of  
5 2008, which specifically says, "Petitioner shall have his name  
6 listed as the biological father on the birth certificate when  
7 the parties' child is born."

8           There's another order from the Colorado Court dated  
9 March 3<sup>rd</sup> of 2008 which again reaffirms and talks about the  
10 Court's conversation and order with regard to a conversation  
11 with Judge Hilder here in Utah. That is found on -- just find  
12 that here -- paragraph 20 of the order dated March 3<sup>rd</sup> of 2008.

13           It says, "The Court orders that the father's name  
14 shall be listed on the parties' daughter's birth certificate,  
15 and the Honorable Utah Third District Court Judge Robert K.  
16 Hilder acknowledged on the record that Utah will recognize this  
17 order to place Father's name on the parties' daughter's birth  
18 certificate."

19           Then again, this Court entered its memorandum decision  
20 on the 20<sup>th</sup> day of August of 2008, and it says, "Finally, to the  
21 extent that the parties have not complied with the Court -- the  
22 Colorado Court's order with respect to placing Mr. Manzanares'  
23 name on the birth certificate, they are ordered to do so  
24 immediately."

25           Your Honor, as indicated in my client's affidavit, his

1 Colorado Counsel, as well as myself, have made extreme efforts  
2 to attempt to accomplish having Mr. Manzanares' name be placed  
3 on the birth certificate. His Colorado Counsel attempted to  
4 effectuate that, and was told that a more specific order needed  
5 to be prepared.

6 I've attached as an exhibit a very specific order  
7 directing the Utah Bureau of Vital Statistics to place Robert  
8 Benito Manzanares' name on the child's birth certificate. It  
9 references the actual State file number, and references the  
10 child's current name, and references the birth mother's name  
11 as it's reflective on the birth certificate currently.

12 I have personally had conversations with individuals  
13 down at the Bureau of Vital Statistics, and have been told  
14 that because there is a pending adoption, that they cannot  
15 do anything to effectuate placing his name on the birth  
16 certificate.

17 I know that I've received since the filing of this  
18 responses from the petitioners and Ms. Terry; and I note  
19 that Mr. Jenkins has filed an affidavit indicating what his  
20 interactions have been with the Bureau of Vitals staff. That  
21 he was contacted on one occasion by them, and that he did not  
22 direct them not to put the birth father's name on the birth  
23 certificate. Rather, he indicated that there is a pending  
24 contested adoption, and whatever they chose to do was their  
25 decision.

1 I can indicate I went to the Bureau of Vital Records  
2 as recent as just this past week on another matter and happened  
3 to just follow up with this to see if there was anything I  
4 could present to the Court. Specifically Mr. Jenkins has made  
5 reference today to a voluntary declaration of paternity.

6 I was asking if I could get a copy of that form,  
7 assuming Ms. Terry was going to be here in person, because  
8 there has been an order from the Court directing that she  
9 appear and show cause why the Court shouldn't enter orders  
10 against her.

11 I was hoping that with something like that it would be  
12 as simple as the Court just saying, "Well, it appears that no  
13 one is disputing Mr. Manzanares' name at this point in time  
14 should be on the birth certificate. We have the parties here.  
15 Let's have them sign this document in open Court in front of a  
16 notary, and have this directly delivered down to the Bureau of  
17 Vital Stats and get it accomplished."

18 I was not given privy of that document. I was told  
19 that I couldn't receive a copy of it; but that if Mr. Jenkins  
20 called and asked for a copy of it, they would give it to him.  
21 I don't know why.

22 THE COURT: I'm lost. Which document?

23 MS. REYES: A document entitled "Voluntary Declaration  
24 of Paternity."

25 THE COURT: Declaration of paternity.

1 MS. REYES: I did explain that he wasn't actually the  
2 attorney for the birth mother; but I was again directed that if  
3 Mr. Jenkins called and requested a copy, they would provide it  
4 to him. I don't know why they wouldn't -- they weren't willing  
5 to give it to me. It was somewhat frustrating.

6 At this juncture my understanding of the situation is,  
7 is that Mr. Manzanares' name has not been placed on the birth  
8 certificate. I know the argument is that at the time the Court  
9 issued the order, Carrie Terry was not a party to the action.  
10 However --

11 THE COURT: Go ahead.

12 MS. REYES: -- her knowledge of the Court's order, she  
13 received a copy of the memorandum decision, she has Counsel  
14 now, there's been efforts made for her to comply with insuring  
15 that Mr. Manzanares' name is placed on the birth certificate.

16 Mr. Manzanares personally has done everything he can  
17 to try and effectuate that. The reason why -- well, obviously,  
18 number one, it's a Court order. So it needs to be followed.  
19 Number two, by having Mr. Manzanares' name placed on the  
20 birth certificate, he's entitled to notice of this adoption  
21 proceeding. When a party is entitled to notice of an adoption  
22 proceedings, they're entitled to file an objection to the  
23 adoption going forward, which causes the Court to then also  
24 go back to this contested adoption section that we've been  
25 referring to all day.

1           So it's very important that this, you know, occur, not  
2 only because it's a Court order, but because it again gives  
3 further basis for Mr. Manzanares to ask the Court to dismiss  
4 the adoption petition and go forward with a -- some type of  
5 custodial order.

6           What we would indicate to the Court is that the  
7 petitioners have been put on notice of their obligation to do  
8 whatever they need to do to effectuate this. Ms. Terry has  
9 been put on notice, although they've made no efforts. I think  
10 the affidavits just say, "Well, we don't care if his name is on  
11 there or not," but they haven't made any efforts to find out  
12 how can we accomplish this, what do we need to do as parties to  
13 this action to make sure it's done. My client's done everything  
14 and anything he can to try and resolve the issue.

15           So we are asking the Court today to --

16           THE COURT: Do you have a copy of the August order with  
17 you?

18           MS. REYES: The memorandum decision?

19           THE COURT: Yes.

20           MS. REYES: I have --

21           THE COURT: I guess what I'm wondering is, is did I  
22 order somebody specifically to do it?

23           MS. REYES: Your Honor, in an attachment to our  
24 affidavit of Robert Manzanares -- and I can provide the copy  
25 -- the Court with my copy -- I just attached the last page

1 where it's referenced with the Court's signature. I can  
2 provide that to the Court if you -- if I'd like -- I may  
3 approach.

4 THE COURT: Just read into the record what it says.

5 MS. REYES: It says specifically, "Finally --"

6 THE COURT: The parties --

7 MS. REYES: -- "Finally, to the extent that the  
8 parties have not complied with the Colorado Court's order  
9 with respect to placing Mr. Manzanares' name on the child's  
10 birth certificate, they are ordered to do so immediately."

11 THE COURT: Who did the Colorado Court order to have  
12 that done?

13 MS. REYES: Your Honor, the Colorado Court's orders  
14 specifically state that his name shall be placed on the birth  
15 certificate. I don't think it directs either party. That's  
16 when -- that was part of the problem. When we provided those  
17 certified copies of those orders to the Bureau of Vital Stats  
18 -- well, let me just check, and I can read what it says here  
19 specifically.

20 The February 29<sup>th</sup>, '08 order from Colorado says,  
21 "Petitioner shall have his name listed as the biological  
22 father on the birth certificate when the parties' child is  
23 born." The March 3<sup>rd</sup> order from Colorado, March 3<sup>rd</sup> of '08  
24 Colorado order says, "The Court orders that the father's name  
25 shall be listed on the parties' daughter's birth certificate.

1 The Honorable Third District Court Judge Robert K. Hilder  
2 acknowledged on the record that Utah will recognize this order  
3 to place the father's name on the parties' daughter's birth  
4 certificate."

5 Then we provided certified copies to the Utah Bureau  
6 of Vital Stats of both of those, and a certified copy of the  
7 Court's memorandum decision; and they said a more specific  
8 order was needed. So Colorado has done a subsequent order to  
9 this, which is very specific to this, and it says, "The Court  
10 orders as follows: Utah Department of Health --" because what  
11 they were saying -- I'm sorry.

12 THE COURT: Let me just get to the bottom of it.

13 MS. REYES: Uh-huh.

14 THE COURT: Do you have any evidence or any information  
15 that any of the parties have failed or refused to cooperate  
16 with you in your efforts that you've been making to get this  
17 name on the birth certificate?

18 MS. REYES: Your Honor, I have correspondence that  
19 was exchanged between Mr. Manzanares' Colorado Counsel and  
20 Mr. Jenkins on the issue of the birth certificate, a letter  
21 that she's requesting that they comply and cooperate, and  
22 Mr. Jenkins has a response to that.

23 THE COURT: And --

24 MS. REYES: I can -- if I may find -- locate that, and  
25 I can provide that to the Court.

1 THE COURT: Please.

2 MS. REYES: Your Honor, this is a letter from Larry  
3 Jenkins to Emily Berkley, who's Mr. Manzanares' Counsel in  
4 Colorado. It's also cc'd to our office, to Carrie Terry and  
5 to a Carly Cablas. I'm not sure who that is; but it says,  
6 "Emily, the promised certificate from Vitals Records did not  
7 come in the mail today. So I had my assistant call Vital  
8 Records. They said the name on the birth certificate is Kaiya  
9 --" I'm sorry, I don't know how to say this child's name, but  
10 -- "Byington. The mother's name would be Ms. Terry's maiden  
11 name.

12 "I also talked with my clients. They tell me Ms. Terry  
13 would not have known the name on the birth certificate because  
14 they filled that part out for her when she was in the hospital.  
15 They confirmed that she did not look at the form, other than to  
16 quickly sign it."

17 This was relating to an issue I think Ms. Berkley was  
18 concerned, because there was a hearing in Colorado where the  
19 Judge asked what the child's name was and whatnot, and she --

20 THE COURT: Didn't know.

21 MS. REYES: -- claimed that she didn't know. It says,  
22 "Having the correct spelling of my client's name would not have  
23 helped you find a birth certificate, because they are not on  
24 it. While I know the process for changing a birth certificate  
25 once an adoption is completed, I do not know any more than you

1 about how to change one prior to the adoption being completed.

2 I do know that if Vital Records will take only --" let's see.

3 "I do not know if Vital Records will take only the  
4 Colorado order, or if you will need to domesticate that order  
5 here. It is true right now Vital Records requires a Court  
6 order to obtain the birth certificate of a child who has been  
7 placed for adoption. I have gone through the rounds with them  
8 many times over the last year since they started that policy,  
9 and have not found any success short of a Court order.

10 "Other than getting Mr. Manzanares' name on the birth  
11 certificate, I don't know if you are -- I don't know if there  
12 are other things you are trying to carry out pursuant to the  
13 Colorado order. I remind you that under the Utah Adoption  
14 Code, getting his name on the birth certificate at this point  
15 does not change a legal status of his relationship under the  
16 child -- to the child under the Utah Adoption Law. The status  
17 of his rights was fixed at the time Ms. Terry placed the child  
18 for adoption."

19 So that was in response to Ms. Berkley --

20 THE COURT: Is there anything in that letter that  
21 you're supporting or relying upon to try to say that they  
22 failed somehow to cooperate with the specific request or  
23 something that you guys were asking them to do?

24 MS. REYES: Ms. Berkley says --

25 THE COURT: No, I meant in Mr. Jenkins' response. I

1 didn't hear any --

2 MR. JENKINS: I just wanted to know what the date of  
3 that is.

4 MS. REYES: It looks like this was dated April 21<sup>st</sup> of  
5 -- is it 20 -- 2008.

6 THE COURT: So months before the order, but in bet --  
7 after the Colorado order?

8 MS. REYES: After the Colorado. His attorney was  
9 attempting to effectuate the --

10 THE COURT: Okay. Do you have anything else after this  
11 Court's order?

12 MS. REYES: After this Court's order, other than the  
13 fact that I can say I've been down to the Utah Bureau of Vital  
14 Records about four different occasions personally.

15 THE COURT: I know -- I know you've made efforts --

16 MS. REYES: Right.

17 THE COURT: -- and have not been successful, but you're  
18 asking that I hold them in contempt for their failure to comply  
19 with this Court's order. In order to do that, I need to know  
20 what their failure has been --

21 MS. REYES: Well, I --

22 THE COURT: -- for their --

23 MS. REYES: I would say, your Honor, their failure has  
24 been non action. They've done nothing. They haven't --

25 THE COURT: Okay.

1 MS. REYES: -- pursued to attempt to comply with the  
2 Court's order. They haven't contacted --

3 THE COURT: Well, I --

4 MS. REYES: -- the Bureau of Vital Records and said,  
5 "We have -- we're under an obligation to effectuate this  
6 change. What do we need to do to accomplish that."

7 THE COURT: And what I'm saying is I guess you both --  
8 maybe we're getting ahead of ourselves; but the order doesn't  
9 specifically direct a specific person or individual to be doing  
10 something. We did it, everybody do it. What you're saying is,  
11 is you've tried --

12 MS. REYES: Right.

13 THE COURT: -- they've done nothing; but we don't  
14 have a specific incident or events where you asked for them  
15 to provide their signature and they've refused; or you have  
16 asked them to go with you at the same time down there to get  
17 it accomplished and they refused. We don't have it; and you  
18 are also saying you're not aware of any affirmative acts that  
19 they've taken on their own independently, correct?

20 MS. REYES: I'm not aware of that. Although I would  
21 indicate that I have been told that Mr. Jenkins, on behalf of  
22 the petitioners, and maybe on behalf of Ms. Terry at a point  
23 in time -- I don't know if they -- I don't think Ms. Terry  
24 had representation at that point in time, and there may have  
25 been confusion there. He was contacted by the Bureau of

1 Vital Records to say, "What's the situation here? We've been  
2 notified by the birth father's Counsel that this needs to be  
3 done;" and based on that conversation, my efforts to move  
4 forward were stalled, and they said, "We can't do anything in  
5 this case.

6 THE COURT: Do you know of anything --

7 MS. REYES: So I don't know what was discussed --

8 THE COURT: -- do you have anything -- you don't know  
9 that? You don't know what was said, you don't --

10 MS. REYES: All I know is that they've told me that  
11 they've had communications with Mr. Jenkins, and they've been  
12 told that there is a contested adoption pending, and that  
13 anything -- to move this forward, they would have to have a  
14 letter from Mr. Jenkins.

15 I did provide their office with a copy of his sworn  
16 affidavit, indicating that, you know, from a legal basis, that  
17 would be better than a letter, because it's a sworn affidavit  
18 and he's clearly stating in here that on behalf of his clients,  
19 there's no objection to placing the birth father's name on the  
20 birth certificate. Still at that point, they said, "We need to  
21 hear that directly from Larry. We need to have a letter from  
22 him."

23 So I'm not sure, and that was just -- that information  
24 was just given to me basically Wednesday, and I haven't had a  
25 chance to correspond with Mr. Jenkins about it; but apparently

1 they're saying he just needs to make contact with them and say,  
2 "Let's get this done." Then once the adoption petition is  
3 dismissed, they can release a copy of the birth certificate,  
4 as long as that's specifically ordered by the Court by way of  
5 a certified Court order.

6           So aside from the contempt issue, your Honor, we just  
7  
8 -- my client needs to get this resolved. It's just -- it's  
9 been pending now since -- for over a year.

10           THE COURT: I understand.

11           MR. REYES: And the position that both parties are now  
12 taking here today is that we don't have any problem getting  
13 this accomplished. So --

14           THE COURT: Well, let's find out. Let's --

15           MS. REYES: Okay.

16           THE COURT: -- put them on the record, and see what  
17 they have to say.

18           MR. JENKINS: Your Honor, I'm not sure if the right  
19 party is here to be dealing with the issue. It sounds like it  
20 might be the Office of Vital Records that needs to be brought  
21 in here, maybe an order entered that way.

22           I think we've laid out an argument in our briefing.  
23 The Court in August ordered that the parties comply with the  
24 Colorado Court order. The Byingtons weren't parties to the  
25 Colorado Court order. So we were assuming that that meant

1 maybe Ms. Terry or something like that, but she wasn't a party  
2 to the proceeding here at the time. So there was a little bit  
3 of confusion that way.

4           The Colorado Court order simply ordered the Utah Office  
5 of Vital Records to put the name on the birth certificate,  
6 and then it references that Judge Hilder said that Utah would  
7 recognize that. It didn't even order anybody -- it didn't even  
8 order Ms. Terry to be involved in that process there. It just  
9 ordered the office to put that -- put that on.

10           THE COURT: Let's just go to the bottom line. Counsel  
11 has made a representation that you won't have any objection to  
12 that happening now; is that true?

13           MR. JENKINS: I don't have any objection as long as  
14 it's just a name on the birth certificate.

15           THE COURT: That's all we're talking about, isn't it?

16           MR. JENKINS: Well, let -- but let me mention, she's  
17 referenced this voluntary declaration of paternity. That's a  
18 very different thing.

19           THE COURT: Yeah, that's not what the order was.

20           MR. JENKINS: Yeah, now internal operating procedures,  
21 I think down at Vital Records is what we're dealing with here,  
22 because they -- my clients don't have standing to say what goes  
23 on the birth certificate.

24           THE COURT: Okay, well --

25           MR. JENKINS: I don't have standing.

1 THE COURT: -- we'll hear from Ms. Terry's Counsel  
2 as well. So the bottom line is you're willing to sign it  
3 and agree to sign off approved as to form as a Court order,  
4 and/or have your clients sign something agreeing to have that  
5 accomplished, correct?

6 MR. JENKINS: I don't care whose name's on the birth  
7 certificate at this point, as long as there's not a voluntary  
8 declaration of paternity --

9 THE COURT: Okay.

10 MR. JENKINS: -- no, that's fine.

11 THE COURT: So you're agreeing?

12 MR. JENKINS: That's fine.

13 MR. HARDY: And I -- I would say the same, your Honor.  
14 I -- we have a concern with the voluntary declaration of  
15 paternity, but neither Ms. Terry nor myself have ever been  
16 contacted.

17 THE COURT: That was never --

18 MR. HARDY: We're willing to comply.

19 THE COURT: -- that was never addressed by the Court.  
20 The voluntary --

21 MR. HARDY: Yeah.

22 THE COURT: -- declaration of paternity was not ordered  
23 by the Colorado Court, nor I don't believe Judge Hilder, who's  
24 on the birth certificate, correct?

25 MR. JENKINS: Yeah. We --

1 THE COURT: So --

2 MR. JENKINS: We recognize the Court orders, and are --  
3 are willing to do what is necessary so that the name will get  
4 on birth certificate.

5 THE COURT: Okay. So we know that this gets done,  
6 shall we get a deadline to have it ordered by --

7 MS. REYES: Yes, your Honor.

8 THE COURT: -- for the parties who are present? Because  
9 I do have jurisdiction over everybody currently, don't I? Is  
10 that correct?

11 MR. JENKINS: I believe so.

12 THE COURT: Right.

13 MR. HARDY: Yes.

14 THE COURT: All right. Give me your recommendation of  
15 when you're going to have this accomplished by.

16 MR. HARDY: I would say very soon.

17 MR. JENKINS: I guess the concern is --

18 THE COURT: Maybe --

19 MR. JENKINS: -- I'm not entirely clear what Vital  
20 Records -- if they just need a letter saying --

21 THE COURT: No, no. I --

22 MR. JENKINS: -- we're okay with it or --

23 THE COURT: -- I don't have a problem with saying that  
24 the certificate has to be issued, but anything and everything  
25 that you guys need to do to sign it. Once you submit it and

1 turn it over to Bureau of Vital Records, it's out of the three  
2 of your hands, and nobody further is responsible after that  
3 point in time. That's why I'm asking when is that deadline  
4 going to be done by?

5 MR. JENKINS: Well, my interaction and knowledge of  
6 Vital Records that I deal with, they're going to need a Court  
7 order to do something, because I can't even get a copy of a  
8 birth certificate of a child placed for adoption --

9 THE COURT: That's fine.

10 MR. JENKINS: -- without a Court order.

11 THE COURT: You guys could come up with an order.

12 MR. JENKINS: Absolutely. I have no problem with --

13 THE COURT: You could sign off on it --

14 MR. JENKINS: -- that if Ms. Reyes wants to draft one.

15 THE COURT: -- approved as to form. You could get  
16 that to me. You could also have an independent affidavits from  
17 each one of your clients saying you'll all agree and consent,  
18 so they've got the underlying consent of all of the parties  
19 potentially involved. Bureau of Vital Records, you would have  
20 the backup affidavits. You would then have the order signed  
21 off on the form for me to see that you've all agreed with it,  
22 and I can sign it. So when will that be accomplished by?

23 MR. JENKINS: Frankly, I think we only need the order.

24 We could do it in a week, I would bet.

25 MS. REYES: Your Honor, the sooner the better.

1 THE COURT: Well, as soon --

2 MS. REYES: I could have the order --

3 THE COURT: -- you tell me when it's going to get  
4 done. May 1?

5 MS. REYES: Your Honor, I have obligations in a  
6 different county, in Sevier County on Monday, and I won't be  
7 in my office in order to dictate that; but I could probably  
8 have the order prepared Tuesday, and I could scan that and  
9 email it to respective Counsel. They could approve it as to  
10 form, but I would hope we could get it to Vital Records --  
11 they're not open on Friday, so -- maybe by next Thursday?

12 THE COURT: Well, let's see if that meets with their  
13 schedules. Will that --

14 MR. HARDY: Fine. I mean, works for me.

15 MS. REYES: Your Honor, and I'm not sure -- again, I've  
16 just -- I've been in circles with the Bureau of Vital Stats. I  
17 go down there and one time they tell me one thing and another  
18 time they tell me another; but with the Court order I would  
19 assume that we could have this accomplished --

20 THE COURT: Well, I can't help you with that.

21 MS. REYES: I understand. I understand, but the  
22 other issue is, is I don't know if they ultimately say, you  
23 know, this could be resolved by way of a declaration of  
24 voluntary paternity, the issue is, is paternity has already  
25 been established in Colorado. Ms. Terry's agreed in her

1 response that he's the biological father. I don't know if  
2 that's a means of accomplishing the same -- the same goal --

3 THE COURT: I suspect that the reason Mr. Jenkins is  
4 objecting to a declaration of voluntary paternity, because  
5 may have additional legal ramifications above and beyond just  
6 putting the name on the birth certificate. If you want to  
7 address that, Mr. Jenkins, or at least outline that for Counsel  
8 maybe that will help. I don't know.

9 MR. JENKINS: Well, it has the same effect as if they  
10 were married. Whereas the birth certificate, with his name on  
11 the birth certificate, all he's entitled to is notice of the  
12 adoption proceeding.

13 MS. REYES: Okay.

14 THE COURT: All right. All right.

15 MS. REYES: Your Honor, we would ask for a deadline,  
16 then, if we could on that, and --

17 THE COURT: Well, that's what I thought we just --

18 MS. REYES: Okay.

19 MR. JENKINS: I thought we -- weren't we going to do it  
20 next week?

21 THE COURT: Yeah, you're the -- the ball's going to be  
22 in your court to get it to them, and they will --

23 MS. REYES: Sure.

24 THE COURT: -- they will get you a commitment. When  
25 would you like; 48 hours after you get it from Counsel?

1 MR. HARDY: That will be fine. Maybe won't take that  
2 long; 24 hours would be fine.

3 MR. JENKINS: Let's take 48.

4 MR. HARDY: Okay.

5 THE COURT: All right. So they'll sign and get it back  
6 to you within 48 hours after that. Also, that you obviously  
7 know what the intention here is. If there's any difficulties  
8 that arises or additional signatures or something else is  
9 requested from the agency, that all parties fully cooperate  
10 and provide that information, whoever it's required from. No  
11 more "We weren't here. We weren't involved," this and that and  
12 the other. We're all involved now. Let's get it taken care of  
13 and put it behind us.

14 With respect to the order to show cause, the Court's  
15 not going to grant the order to show cause (inaudible). We'll  
16 dismiss that request and will not find anybody in contempt  
17 of Court at this time for that request. As far as the other  
18 motions go, the Court will issue a written decision on that to  
19 you shortly.

20 MR. JENKINS: Okay.

21 THE COURT: Any other matters we need to handle?

22 MR. JENKINS: I believe that's it, your Honor.

23 MS. REYES: Your Honor, the -- I'm assuming that the  
24 Court intends to issue a decision with regard to visitation,  
25 but my client has asked for some visits --

1 THE COURT: I'm --

2 MS. REYES: -- pending any further hearing or pending  
3 any further decision by the Court. Would the Court be inclined  
4 to -- because a motion's been pending and there has been no  
5 opposition to address a visit while Mr. Manzanares is here --

6 THE COURT: Well, if they want to voluntarily agree,  
7 short of a written decision, that's fine. If they're refusing,  
8 that's fine. We're going to leave a paper trail on this one.

9 MR. JENKINS: I need to talk to my clients about that.  
10 I don't know, but we can converse after.

11 THE COURT: Well, if you want to talk with them now,  
12 and then we'll decide. Let us know whether they will or they  
13 won't.

14 MR. JENKINS: Absolutely. Can we go out?

15 THE COURT: Sure.

16 MR. JENKINS: Okay.

17 THE COURT: All right, Court's in recess.

18 MS. REYES: Thank you.

19 (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 10<sup>th</sup> day of September 2009.

My commission expires:  
February 24, 2012

\_\_\_\_\_  
Beverly Lowe  
NOTARY PUBLIC  
Residing in Utah County