

P R O C E E D I N G S

(Electronically recorded on July 21, 2008)

THE COURT: All right, can I have everybody formally put their appearances on the record because we are recording this.

MR. JENKINS: Larry Jenkins, and I've got my attorneys in my office; that's why I'm on speaker phone. We're appearing for petitioners.

THE COURT: Thank you.

MS. REYES: Jennifer Reyes appearing on behalf of Robert Manzanares.

THE COURT: Thank you.

MR. WILLIAMS: And Derek Williams is present on the call and not appearing on behalf of Carie Terry, but I can discuss that further, later, whenever the Court would like.

THE COURT: Okay. Who is the one that requested the phone call, and what can I do to help you?

MR. JENKINS: I think that Mr. Williams was the one that kind of initiated the idea; although, your Honor, I think it would be helpful for all of us. As I understand it, Mr. Williams had made an appearance in the Court of Appeals in the matter that we'd filed there, and that that has now been dismissed; but he hadn't made an appearance in the trial Court.

I think that the idea was to try and understand the scope of the hearing next week from his perspective so that he

1 could advise Ms. Terry whether she needs to have Counsel
2 present next week if we're going to get into the -- you know,
3 just what phase of that 4.16 analysis we're looking at next
4 week.

5 THE COURT: Well --

6 MR. WILLIAMS: And I'm happy to --

7 THE COURT: -- my --

8 MR. WILLIAMS: --give some background on my involvement
9 if it would help the Court right now.

10 THE COURT: Well, actually no, it wouldn't, and let
11 me tell you why. My perspective is, is that we need to be
12 prepared to get into anything and everything next week to try
13 to get this matter resolved. I understand you did make an
14 appearance at the Court of Appeals; but I have a problem or
15 an issue of her -- well, let me back up.

16 I think it's important that she be here; and I think
17 we put that in our minute entry, that she should be here with
18 Counsel. If you don't want to represent her or you can't
19 represent her, if she doesn't want you to represent her, then
20 she can get her replacement Counsel or whatever, fine; but I
21 think the matter does involve her. I think the matter does
22 potentially involve her rights, especially if we have to
23 proceed and get into what is in the best interest of the
24 child because -- as to which parent to return it if we get
25 that far.

1 I don't think she should be in a position where she
2 can say she can come to the state of Utah, use its laws, give
3 the consent, but then say, "Well, I'm no longer involved," when
4 precisely we're dealing with the issue of consent and the issue
5 of adoption that she gave, you know, to some degree here in
6 Utah, and (inaudible) silence.

7 MR. JENKINS: I understand that she is planning to be
8 here. I haven't spoken directly with her, but I have talked
9 with her brother, and she is planning to be here. I think the
10 issue, you know, Mr. Williams was trying to understand it, that
11 she -- you know, if she is -- we are going to get into the best
12 interest of the child or if there is the potential to do that,
13 then --

14 THE COURT: I think there is.

15 MR. JENKINS: Okay. I think that's what he had stated
16 here.

17 MR. WILLIAMS: Yeah, I am not -- I'm not going to be
18 returning on matters involving custody and visitation and best
19 interests. That's why when I got the minute entry --

20 THE COURT: Okay.

21 MR. WILLIAMS: -- that said I, along with her, required
22 to be in attendance at the trial, I just -- I just need to know
23 how to advise her, because that's not me. I just need to --

24 THE COURT: We didn't want to let you withdraw, and
25 then have to give a notice to appoint new Counsel and postpone

1 this hearing date an additional 20 days while she gets new
2 Counsel under notice to appoint Counsel and that kind of thing,
3 and --

4 MR. WILLIAMS: Sure.

5 THE COURT: -- you know, so --

6 MR. WILLIAMS: That -- that -- that, though, like is
7 an important point that I think I need to make a clarification
8 on her behalf on the record. That is that that provision of
9 notice would apply to parties to the case.

10 Now that the Court has reversed the July 1st order
11 dismissing the adoption petition and reinstated the petition
12 for adoption, she is not a party to the adoption proceeding,
13 a formal party that would be bound by that particular rule, or
14 would probably -- she's not a party that's under -- technically
15 under the jurisdiction of the Court as a party to the case.

16 Now, I recognize and understand what your Honor has
17 just said about the question of notice and best interest and
18 that, and that sort of thing. That would be in the event that
19 the Court were to, I assume that this trial coming up, then
20 decide to dismiss the adoption petition and move right into a
21 best interest custody hearing, she would then be brought back
22 in as a party for that purpose.

23 What I hear the Court saying is that that is the
24 portion, if it gets to that point, that she would need to be
25 present and have an attorney; but that's kind of, you know,

1 ordering her to be there under the assumption that you get to
2 that point where she is a party to the case again. I don't
3 know if I can explain that --

4 THE COURT: Well, how --

5 MR. WILLIAMS: -- that very well.

6 THE COURT: -- how is she a party to the appeal for my
7 case? I mean, you guys went up and appealed it from my --

8 MR. WILLIAMS: Right.

9 THE COURT: -- case, and she wasn't involved in the
10 first place. What standing did she have at the Court of
11 Appeals?

12 MR. WILLIAMS: Because of July 1st the Court dismissed
13 the adoption petition. Once the Court dismissed that adoption
14 petition, she had the right to come back in as a party and
15 assert her parental rights for purposes of visitation and
16 custody. It was those rights that we were trying to preserve
17 and raise with the Court of Appeals on the appeal, because
18 the adoption petition had been formally dismissed on July 1st.

19 THE COURT: Okay. Well, I think she's got relevant
20 information as to what she did, when she did it, and why she
21 did it.

22 MR. WILLIAMS: Okay, and I don't --

23 THE COURT: That has --

24 MR. WILLIAMS: -- dispute that. I think she --

25 THE COURT: -- I think I had a hearing on all of that,

1 and so --

2 MR. WILLIAMS: -- would actually could be there as
3 a witness for Mr. Jenkins and for the Byingtons. She has
4 confirmed to me independently that she will be there. So I
5 don't think that there is a problem with that. I just needed
6 to make the record clear on the party and standing issue and
7 my involvement, so that there wasn't a question about why I
8 appeared limited for that one filing, and then I filed a notice
9 of withdrawal rather than a motion to withdraw.

10 I filed it as a notice because I had started receiving
11 documents, and I was on certificates of service for various
12 parties as well as the Court, and I needed to make it clear
13 that we were through.

14 A notice of withdrawal was sent to the Court for
15 information purposes, because I somehow got on the certificate
16 of service; but because we had never formally appeared in the
17 adoption proceeding, it was sent by way of a notice rather than
18 a motion.

19 THE COURT: Well, if she wants to get somebody else to
20 represent her, that's fine. I'll be happy to agree to let you
21 out.

22 MR. WILLIAMS: Okay.

23 THE COURT: All right.

24 MR. WILLIAMS: Thank you for that clarification.

25 THE COURT: All right, thank -- anything else from

1 anybody?

2 MS. REYES: Your Honor, Jennifer Reyes. I have a
3 question. My client, assuming he's going to go forward in
4 regard to that particular issue, we do have a (inaudible)
5 Colorado an appointed guardian ad litem for the child, Vivienne
6 Virgo. She's indicated to me that she should be available to
7 appear by telephone (inaudible) adoption requesting that. Would
8 the Court be willing to address that issue today? Otherwise
9 (inaudible) --

10 THE COURT: Mr. Jenkins, do you have any problems with
11 that?

12 MR. JENKINS: Well, your Honor, as I understand it, the
13 Court in Colorado concluded that back on I believe July 7th --
14 I'm not sure what date it was -- they didn't have jurisdiction
15 over the child.

16 So I guess I'm trying to understand, you know, this is
17 a guardian ad litem that has never seen the child, never been
18 involved with the child, and appointed by a Court that has now
19 been -- now decided that it didn't have any jurisdiction over
20 the child.

21 I can't see what relevant information she might be
22 able to provide to the Court, or why she should be allowed to
23 appear to represent the child here when she -- if she wasn't
24 even appointed by the Court here.

25 If we're going to have a guardian ad litem appointed

1 or involved, I think it ought to be somebody that's involved
2 with the Utah Courts here, where the Court actually does have
3 jurisdiction over the child.

4 THE COURT: The question still remains, do you have any
5 objection with her providing whatever help -- information we
6 find to be relevant or irrelevant over the phone versus in
7 person?

8 MR. JENKINS: I don't.

9 THE COURT: Okay, then she can appear by phone.

10 MS. REYES: Okay, your Honor, and as well, I don't
11 know what's anticipated, but I can provide a witness list. My
12 client will, of course, be testifying. His parents will be
13 there testifying on some other issues (inaudible) -- and are
14 available to testify with regard to his character and parenting
15 abilities and whatnot. So we will be having them present.

16 THE COURT: What will also be very helpful for the
17 Court is specific dates with documentation, such as when was
18 the child born; when was the petition in Colorado filed; when
19 did -- you know, for example, if Mr. Jenkins is representing
20 the Court has made a determination by a particular order that
21 has no jurisdiction. I'd like a copy of that order with the
22 date on that, and you know, anything that's relevant.

23 When did she come to Utah; when did she leave Utah;
24 when was the consent actually taken; when was the Court hearing
25 that she called up 15 minutes before, and you know, those kinds

1 of things I need just as specific of details as we can possibly
2 get as to be able to reconstruct what happened and when between
3 these two parties that we can, okay?

4 MR. JENKINS: Okay, Judge.

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

6 MS. REYES: Okay, thank you.

7 THE COURT: All right, bye-bye.

8 (Telephone conference concluded)

REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

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

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

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

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

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

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

Wendy Haws
Certified Court Transcriber

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

My commission expires:
February 24, 2012

Beverly Lowe
NOTARY PUBLIC
Residing in Utah County