

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

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

Evidentiary Hearing
Electronically Recorded on
July 28, 2008

BEFORE: THE HONORABLE ROBERT FAUST
Third District Court Judge

APPEARANCES

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P R O C E E D I N G S

(Electronically recorded on July 28, 2008)

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

MR. JENKINS: Your Honor, Larry Jenkins appearing-- and Lance Richter also, your Honor, appearing for the petitioners, the Byingtons. I have Mr. Scott Byington with me as well.

THE COURT: Thank you.

MS. REYES: Your Honor, Jennifer Reyes appearing on behalf of Robert Manzanares, who's here in person. I also would like to apologize to the Court and co -- opposing Counsel of my few minutes being late this morning because of traffic. I apologize.

THE COURT: Thank you. Counsel.

MR. WILLIAMS: Your Honor, I'm Derek Williams. I'm not going to make a formal appearance at this point; but I'm here in the event that I'm needed on the record to represent Ms. Terry, but that may not be at this point.

THE COURT: And is she also present in the courtroom?

MS. TERRY: I am here.

MR. WILLIAMS: Ms. Terry is here.

THE COURT: All right, thank you. Is there any preliminary matters we need to handle before we start?

MR. JENKINS: I guess the only thing I can think of,

1 your Honor, I don't know if -- how you wanted to proceed in
2 order. We've talked before. The adoption code first looks
3 at, you know, whether Mr. Manzanares' consent was required.
4 I don't know if that's the issues you want to go to first, talk
5 about that; and then if we need to get to custody, we can -- we
6 can do that. I don't know how you want the presentation of the
7 evidence to go.

8 THE COURT: Well, we can do that. I'd like to hear
9 both, you know, regardless. So --

10 MR. JENKINS: Okay.

11 THE COURT: -- it doesn't -- you know, if you want to
12 reverse the order, I'll be able to keep track with you. It's
13 however makes the most sense for your presentation and for your
14 witnesses that you have. So it's your call.

15 MS. REYES: Your Honor, would the Court then prefer
16 if I'm going to call my client, for instance, to get into all
17 of the issues that would be before the Court, specifically the
18 consent issue and custody all at one point in time; or would we
19 have the opportunity to recall him? I just don't want to put
20 him up on the stand and not get into everything and not be able
21 to recall him later on. I don't have a problem getting into
22 everything up front.

23 THE COURT: Mr. Jenkins, your thought?

24 MR. JENKINS: Your Honor, I think it makes sense to
25 talk initially about the consent issue, and then we -- I have

1 no problem with recalling him.

2 THE COURT: Yeah, I think maybe that may make a little
3 bit more sense. At least we'll be able to separate in my
4 notes, keep it separate, issue by issue, if that's all right.
5 So let's just focus in on that first, and then we can make sure
6 we've covered all of that before we go to the next step. All
7 right.

8 MS. REYES: Sure.

9 MR. JENKINS: I would ask just as a matter of I guess
10 (inaudible) try and understand who the different people are
11 that they would like to call by telephone in the motion that
12 they filed the other day. I don't know if they go to custody.
13 Ms. Terry doesn't know most of them. She knows a few of them.
14 So I'm assuming that some of them are for custody, but I don't
15 know that.

16 THE COURT: The only one that I recall that was
17 discussed was the guardian ad litem, who may not have done
18 anything other than get appointed in the case.

19 MR. JENKINS: Right, well --

20 THE COURT: Anybody else?

21 MR. JENKINS: -- Mr. Manzanares filed a motion the
22 other day seeking permission with another list of about seven
23 or eight --

24 THE COURT: I don't recall that I saw that.

25 MR. JENKINS: -- people. We had filed something --

1 THE COURT: I think -- I saw yours, but I didn't see
2 anything from them.

3 MR. JENKINS: Okay.

4 MS. REYES: Your Honor, on the same day that we
5 received the petitioner's motion for a telephonic appearance
6 -- I didn't know if the Court would be inclined to address
7 further witnesses -- at the time I spoke with the Court at the
8 telephonic conference, I knew that we had that one individual,
9 Vivian Burgos would be a person we anticipated calling; but
10 thereafter in speaking with my client, he did have other people
11 that he would anticipate calling.

12 So in lieu of receiving their motion for telephonic
13 approval, I did file a motion that same day. Although because
14 the Court can't accept faxed copies, I wasn't able to get it
15 to the Court. So it may still be in the mail, but I know that
16 Mr. Jenkins has received that.

17 Most of those individuals on that, if not all, have to
18 do with the issue of custody. I can go through that, but what
19 I would ask the Court, as far as a preliminary issue as well,
20 is that the parties disclose their anticipated witnesses, just
21 so that we don't get into an issue where there's people coming
22 out of the woodwork here that we didn't anticipate hearing from
23 and whatnot.

24 THE COURT: Yeah, I was going to say, I assume you
25 would want to invoke the exclusionary rule. So let's just talk

1 about who we're going to have.

2 MS. REYES: Right.

3 THE COURT: All right, who are you going to have on the
4 issue of whether the consent is needed or not, and the factual
5 backgrounds leading up to and prior on the consent? Who do we
6 have; your client?

7 MS. REYES: I have my client, your Honor. I would also
8 anticipate possibly calling his mother, Elizabeth Manzanares,
9 and possibly his father, Robert Manzanares, who are present in
10 Court.

11 THE COURT: Okay.

12 MS. REYES: And then, let's see, with regard to other
13 individuals, as far as the consent goes --

14 (Counsel conferring with Father off the record)

15 MS. REYES: -- and then possibly Vivian Burgos, who has
16 been appointed as the guardian ad litem in the case.

17 THE COURT: All right.

18 MS. REYES: Those are the three I anticipate calling in
19 the first phase of the case. Then I have several other names I
20 can list for the Court, as far as who I anticipate calling on
21 the issue of custody.

22 THE COURT: Let's stay on consent for just a moment.

23 MS. REYES: Okay.

24 THE COURT: Mr. Jenkins, who did you have?

25 MR. JENKINS: Your Honor, on the issue of consent,

1 primarily Ms. Terry, perhaps Mr. Byington -- that's not a for
2 sure -- but also the two witnesses that we indicated in our
3 motion last week, Curdles, who is with LDS Family Services,
4 and also Mr. Kurt Terry, who is Ms. Terry's former husband.

5 THE COURT: Okay, and on the issue of best interest for
6 the child for custody, who would they be?

7 MS. REYES: Your Honor, we would have obviously my
8 client, probably his parents once again, a Judy Meadow, a Tom
9 LaCassy, a Vivian Burgos.

10 THE COURT: Who are those two besides Vivian Burgos?

11 MS. REYES: Judy Meadow is a coworker with Ms. Terry
12 presently, and has also worked with my client in the past.

13 THE COURT: Okay. Would it make sense for Ms. Burgos
14 on the phone to cover everything with her -- the people we have
15 on the phone that --

16 MR. JENKINS: I believe so, your Honor, yeah.

17 THE COURT: All right. Just because of the logistics
18 and the problems of getting -- okay.

19 MS. REYES: Sure. Tom LaCassy works with Carrie and
20 worked with my client as well, Mr. Manzanares. Christine
21 Simmons is my client's -- is an ex-girlfriend of my client's.
22 he was in a relationship for four years with her, and would
23 just be able to attest to certain issues of character --

24 THE COURT: Okay.

25 MS. REYES: -- his ability to interact with children,

1 et cetera. Shannon Simmons is a sister-in-law to Christy,
2 and knows about his parenting abilities. Thomas Hoskin is
3 my client's best friend, would have knowledge about his
4 interaction with Carrie and their relationship, and just him
5 as an individual.

6 Josh Goode is my client's regional manager at his
7 current work situation. Monica Padea is a previous employer of
8 his -- well, a previous supervisor of his, and would be able to
9 attest to his employment history, et cetera. Franchesca Rider
10 is also a close friend of my client's. Then Jackie Northrup,
11 who is a nurse practitioner, who would testify to the fact that
12 my client's gone through a parenting course and gone through
13 courses specific to caring for infants, et cetera.

14 THE COURT: Okay. How many of those are duplicative?
15 There's no way we're going to get all of those --

16 MS. REYES: Right, I understand.

17 THE COURT: -- people on and off in two days.

18 MS. REYES: I understand, your Honor, and these are
19 just anticipated. It's upon their availability, but I would
20 assume --

21 THE COURT: Okay.

22 MS. REYES: -- that Josh Goode and Monica Padea,
23 they're both basically for the purpose of just establishing
24 with the Court my client's employment history, his current
25 employment status. Those could probably be narrowed down to

1 one. Judy Meadow and Tom LaCassy, those are probably one in
2 the same as well. Either one of them could probably accomplish
3 that. So that would narrow it down to just two there.

4 Christine Simmons is probably someone that my client
5 would like the Court to hear from, and Shannon Simmons; but
6 I don't anticipate that their testimony would be lengthy --
7 lengthy at all. Then Jackie Northrup, she would be a necessary
8 witness for us, but again, I don't think her testimony would be
9 lengthy.

10 THE COURT: Thank you. Mr. Jenkins.

11 MR. JENKINS: Your Honor, on custody issues primarily I
12 think Ms. Terry and maybe Mr. Byington and his wife, Julissa.
13 I did neglect to mention we have talked of calling a Paula
14 Thacker, who is the midwife that actually delivered the baby.
15 We hadn't provided anybody with any information about her
16 first, but that would go more to the consent issue than it
17 would to the custody, and just, you know, the information
18 surrounding the delivery and that kind of stuff.

19 THE COURT: Exhibits, do you have exhibits that you've
20 already got marked? You're ready to go on exhibits?

21 MR. JENKINS: I think we're ready to go on exhibits. I
22 don't know that we have them pre-marked.

23 THE COURT: All right.

24 MR. JENKINS: Looks like Ms. Reyes has a book that put
25 together. I didn't know what order we were going in. So I

1 don't -- didn't have my pre-marked numbers.

2 THE COURT: We can handle that as we go, then.

3 MR. JENKINS: Okay.

4 THE COURT: Is there anything that you guys can agree
5 to and stipulate on the record so we don't have to cover the
6 ground?

7 MR. JENKINS: I don't know.

8 THE COURT: Well, date of birth of the child I don't
9 think is anybody --

10 MR. JENKINS: I think there are some of those things
11 that we could certainly agree --

12 THE COURT: Yeah. I mean, things of that nature; the
13 date that the petition was filed, the date that consent was
14 given, the date -- I mean, those things that are pretty black
15 and white as far as --

16 MR. JENKINS: Basic.

17 THE COURT: -- documentary evidence. We ought not to
18 really waste time on those if we can -- we don't need to. All
19 right. Anything else either one of you can -- want to cover?
20 I guess we're going to have to ask the parents to go in the
21 hallway.

22 MR. JENKINS: I think so.

23 THE COURT: If you want to take a moment and get your
24 clients settled out -- parents out in the hallway, and let them
25 know what we're doing and why we're doing it, please go ahead.

1 MS. REYES: Your Honor, would that be applicable to
2 Carrie Terry in this matter as well where she's not technically
3 a party to the petition?

4 THE COURT: No, I think we better have her in here at
5 all times.

6 MS. REYES: Okay.

7 THE COURT: Just so we don't have any issues or
8 concerns being raised about her being present and what she
9 did and didn't hear, et cetera.

10 MS. REYES: Okay, your Honor, and is Ms. Byington --
11 Mrs. Byington going to be present in these proceedings?

12 THE COURT: I have no idea.

13 MS. REYES: I just --

14 MR. JENKINS: She will be at time. I think that the
15 primary issue is childcare right now, and that's what they're
16 dealing with.

17 MS. REYES: I just wanted to be able to, if necessary,
18 call her as a possible witness. I didn't know if she was going
19 to be -- I understood from the previous hearing --

20 THE COURT: If she's going to be --

21 MS. REYES: -- that they would be present in person
22 here today; so I was just concerned about that.

23 THE COURT: Thank you.

24 MS. REYES: Your Honor, I do have some exhibits that
25 have -- if the clerk would like them now to mark, or I can

1 present them, however the Court would desire.

2 THE COURT: What do you want to do, Pat?

3 COURT CLERK: How many do you have?

4 MS. REYES: I believe there's 15.

5 COURT CLERK: Why don't you give them to me now.

6 MS. REYES: Okay. May I approach, your Honor?

7 THE COURT: You may. Has Counsel seen copies of those,
8 right?

9 MR. JENKINS: She's provided me with a copy, your
10 Honor.

11 MS. REYES: I have, your Honor.

12 THE COURT: All right, if you don't have any objections
13 to them, we'll just submit them all at one time.

14 MR. JENKINS: You know, just reviewing, it appears
15 that their Exhibit No. 5, which is the petition filed over in
16 Colorado, there appears to be at least one page missing from
17 that; but other than that, I'm fine with -- in fact, I have
18 copies of a lot of these that I anticipated using as well.

19 THE COURT: Do you have a complete copy of Exhibit 5,
20 yourself, Mr. Jenkins?

21 MR. JENKINS: I do, your Honor, yes.

22 THE COURT: All right. Well we can take care of that,
23 then.

24 MR. JENKINS: So yeah, we can fix that. I just --
25 like I -- as I flipped through, there was this -- it appears

1 the fourth -- well, I guess the last two pages of the act --
2 two pages of the actual petition itself is missing; and I'm
3 assuming all of the exhibits are there, but I haven't gone
4 through to compare.

5 THE COURT: Okay, let's get started.

6 MR. JENKINS: Okay.

7 MS. REYES: Your Honor --

8 THE COURT: Yeah, will you walk them out?

9 MS. REYES: I will, your Honor. I also have a courtesy
10 copy for the Court of these, and understand that if they're not
11 received, but so the Court has copies while the --

12 THE COURT: Thank you.

13 MS. REYES: -- do you mind if I provide this to the
14 Judge?

15 MR. JENKINS: (No verbal response).

16 MS. REYES: Would you like me to approach?

17 THE COURT: Please. Thank you.

18 (Counsel exits the courtroom with witnesses, then
19 re-enters)

20 THE COURT: All right, regarding opening statements,
21 would both sides be willing to waive opening statements? I've
22 read the file and everything contained therein.

23 MR. JENKINS: Well, we already had our arguments on
24 the 1st.

25 THE COURT: Yeah, previously, so I'm well aware. So

1 if it's okay, maybe we ought to just move in to taking the
2 evidence. It's your call.

3 MS. REYES: If the Court feels comfortable and well
4 informed, then I'm okay with waiting; and if the --

5 THE COURT: All right, let's do it.

6 MS. REYES: -- doesn't feel it necessary.

7 THE COURT: Let's go ahead and call your first witness.

8 MS. REYES: Your Honor, I would call my client, Robert
9 Manzanares.

10 THE COURT: Thank you. Mr. Manzanares, please come to
11 the podium.

12 COURT CLERK: Raise your right hand. Do you solemnly
13 swear the testimony you are about to give will be the truth,
14 the whole truth and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 COURT CLERK: Take the stand, please.

17 ROBERT MANZANARES,

18 having been first duly sworn,

19 testified as follows:

20 DIRECT EXAMINATION

21 BY MS. REYES:

22 Q. Mr. Manzanares, can you please state your name for the
23 -- for the Court.

24 A. Robert Manzanares.

25 Q. And where do you currently reside?

1 A. Highlands Ranch, Colorado.

2 Q. Okay, and how old are you?

3 A. Thirty years old.

4 Q. And how long have you resided in --

5 A. I have lived in Highland Ranch for four years,

6 approximately. Close to four years in September.

7 Q. Okay, and what is your educational background?

8 A. I have my undergraduate, which is a Bachelor's of

9 Science in Kinesiology from (Inaudible) State University; and

10 I have my MBA from the University of Phoenix.

11 Q. Okay, and what is your employment situation currently?

12 A. I'm currently the Branch Manager for TCF National Bank

13 in Highland Ranch.

14 Q. And previous to that where did you -- where were you

15 employed?

16 A. I was employed with 24 Hour Fitness. I was a personal

17 training manager with 24 Hour Fitness. Then prior to that I

18 was with the Colorado (Inaudible) Wellbridge approximately six

19 years.

20 Q. Okay, and so how long have you been employed at your

21 current position as a branch manager over a bank?

22 A. It will be a year in August.

23 Q. A year in August, okay. Now, in proximity to your

24 employment, where do you reside; how close?

25 A. I'm literally about two-and-a-half miles away from

1 work.

2 Q. Okay, and what is your current income ability?

3 A. Right now I'm on salary of approximately \$40,000; and
4 I have bonus very well, do to the success of my bank. So --

5 Q. Do you have any idea of what you may be anticipating,
6 at least at this point in time, from your earnings in 2008?

7 A. Close to 60,000.

8 Q. Okay. Mr. Manzanares, are you currently involved in a
9 relationship with any individuals?

10 A. No.

11 Q. Female individuals?

12 A. No, I am not.

13 Q. And what was the last relationship you had?

14 A. It was with Carrie.

15 Q. And who is that again?

16 A. Ms. Terry. Carrie Terry.

17 Q. Carrie Terry, okay. Who is she in relation to you?

18 A. She's the mother to my daughter.

19 Q. Okay.

20 A. And my ex-girlfriend of a year.

21 Q. Okay. Now, let me get into a little bit more about
22 that relationship.

23 A. Sure.

24 Q. When did you and Ms. Terry start dating?

25 A. It was approximately about the end of September in

1 2006.

2 Q. Okay, and when did your relationship basically end,
3 as far as -- as far as you having a romantic relationship with
4 each other?

5 A. I believe around August 25th. Sometime at the end of
6 August of 2007.

7 Q. Okay. Was there any period of time where the two of
8 you resided with each other?

9 A. Yes.

10 Q. And when was that from?

11 A. We officially lived -- moved in about February of
12 2007. She had moved all of her stuff into my one-bedroom
13 apartment with her daughter. In about 2007 we signed our
14 lease for our place in Palomino Park in about June 30th, July,
15 somewhere around there.

16 Q. Okay, now you mentioned that she had a daughter -- or
17 has a daughter?

18 A. Yes.

19 Q. Is this daughter from a previous relationship or
20 marriage?

21 A. Yes, it's from a previous marriage.

22 Q. And what's the child's name and age?

23 A. Amaiya Terry, and I believe her age, she's seven years
24 old now.

25 Q. Okay, and is the child a female or male?

1 A. She's a female.

2 MS. REYES: Okay. Your Honor, if I may approach the
3 clerk and possibly obtain a --

4 THE COURT: You may.

5 MS. REYES: -- exhibit.

6 Q. BY MS. REYES: Mr. Manzanares, I'm going to show you
7 what's been marked as Respondent's Exhibit 1.

8 A. Yes.

9 Q. Do you recognize that document?

10 A. Yes, I do.

11 Q. And what is that document?

12 A. This is our lease agreement from our residence at
13 Palomino Park.

14 Q. And what does this document in its entirety entail?
15 Have you had a chance to look through it --

16 A. Yes, I have.

17 Q. -- and see what --

18 A. Basically just says that we are moving in together.
19 She was being added on as a roommate of mine to the apartment
20 at Palomino Park. It also shows that we previously lived at
21 the same address in Lone Tree, Colorado.

22 MS. REYES: Okay. Your Honor, I would offer Exhibit 1.

23 THE COURT: Any objections?

24 MR. JENKINS: Your Honor, I don't have any objections
25 to the lease agreement. I know that there are several other

1 documents attached behind the Exhibit 1 tab. Perhaps he
2 could identify those as well. I don't anticipate having
3 any objection to the additional documents that are attached.

4 MS. REYES: I can go -- I can get into that further,
5 your Honor.

6 THE COURT: I was going to say, would Counsel take
7 -- just to help expedite -- take a look at any of the other
8 Exhibits 2 through 15, and see if there's any other that you
9 object -- maybe we can just have them all admitted at one time.

10 MR. JENKINS: Okay.

11 THE COURT: Then rule from there. All right.

12 MS. REYES: Would the Court like me to go forward? I
13 apologize.

14 THE COURT: Well, he's -- he wants you to --

15 MS. REYES: To go for --

16 THE COURT: -- I guess lay a foundation as to the other
17 documents --

18 MS. REYES: Sure.

19 THE COURT: -- before he --

20 MS. REYES: Okay. I'll go forward, your Honor.

21 Q. BY MS. REYES: Mr. Manzanares, also as Exhibit No. 1
22 there is additional documentation attached.

23 A. Yes.

24 Q. Can you explain to the Court what those additional
25 documents are, and what they -- what they mean?

1 A. Absolutely. Page 2 is the rental application, which
2 she signed with her make of her car, her Social Security
3 number, driver's license number, her place of work; and also
4 the present address which is the address that I resided at --
5 we resided at prior to her moving into -- with me at Palomino
6 Park, us moving in together at Palomino Park.

7 Next document I believe is just a rental application.
8 It just goes through the rules and regulations of being a
9 resident of Palomino Park, which she signs and dates as
10 July 10th. The next is a letter of acceptance for her move
11 in. Then the -- sorry if I'm moving too fast. The next
12 document is deactivation of her roommate add on to the -- I
13 guess it's the activation of her pass to the gated community
14 that we lived in.

15 Then on the next page is her notice to -- of her
16 intent to vacate living -- us living together. Then her letter
17 to the managers of Red Canyon, which is the subcommittee of
18 Palomino Park that we lived in, that she was going to vacate.
19 Then I had to sign a release for her to vacate the apartment,
20 and then the deactivation of her passes to the apartment
21 complex.

22 MS. REYES: All right. Your Honor, we would offer
23 Exhibit 1.

24 MR. JENKINS: No objection.

25 THE COURT: So admitted.

1 (Exhibit No. 1 received into evidence)

2 Q. BY MS. REYES: Mr. Manzanares, during your relationship
3 with Carrie Terry, did the two of you conceive a child?

4 A. Yes.

5 Q. And when approximately did that occur?

6 A. Approximately sometime in the middle of June, I
7 believe.

8 Q. Okay, and after you learned of the pregnancy, what
9 involvement did you have with Carrie Terry and your unborn
10 child at that time?

11 A. Well, we -- I was extremely ecstatic. I was happy to
12 become -- to know that I was about to become a father. We were
13 still living together. I attended three doctor's appointments
14 and an ultrasound. We finally attended an ultrasound which
15 was in utero, we tried to determine the age of our daughter,
16 because we weren't quite sure when we had actually conceived,
17 which through that ultrasound states eight weeks and three
18 days, which was on August 9th of 2007. I was besides myself
19 with excitement, and prepared to a father.

20 Q. Okay. So you indicated you went to three doctor's
21 appointments.

22 A. Yes.

23 Q. And one of those there was an ultrasound done?

24 A. Yes.

25 Q. Did that give you an anticipated date of birth?

1 A. Yes.

2 Q. And what is your recollection of that date?

3 A. My anticipation for birth, due to that ultrasound,
4 which was August 9th; and the ultrasound stated three weeks
5 and -- or yeah, eight weeks and three days, I'm sorry -- gave
6 me the idea that our child would have been born March 24th, had
7 there been a 40-week pregnancy cycle.

8 Q. Okay, and do you recall the approximate dates when you
9 attended those three doctor visits with Carrie Terry? Do you
10 know when the first one would have been, approximately?

11 A. Probably -- want to believe it was the end of July,
12 early August. Then the second one, which was the ultrasound,
13 was August 9th. Then the last one was, I believe, August 24th,
14 30th, sometime. It was sometime at the end of August.

15 Q. Okay, and then when did Carrie Terry actually move out
16 of your residence; do you recall?

17 A. I believe she moved out September 9th.

18 Q. September 9th, okay; and after she moved out, did you
19 attempt to keep in touch with her?

20 A. Yes.

21 Q. And what, in particular, were you hoping to speak with
22 her about?

23 A. Well, I was hoping that she was okay, for one; and for
24 two, the well-being of my child was very important and critical
25 to me to know that my child was healthy; and that if there as

1 anything I could help to provide her with or do for her in
2 regards to my child and her, I was willing to do that.

3 Q. And how did you communicate with Carrie Terry?

4 A. I attempted to communicate with her via telephone and
5 email.

6 Q. And how many times, approximately, do you believe you
7 spoke with her on the phone?

8 A. After she moved out?

9 Q. After she moved out.

10 A. I would say, well, we spoke probably on an every
11 other day basis, just trying to reconcile, you know, bills,
12 and you know, what was hers, what was mine in the apartment.
13 Then after probably I would say the middle of September, was
14 probably -- I tried to email her at least once a week to every
15 other week, and then I tried to call her at least once a week.

16 MS. REYES: Your Honor -- I'm going to show you,
17 Mr. Manzanares, what's been marked as Respondent's Exhibit 2.
18 May I approach, your Honor?

19 THE COURT: You may.

20 Q. BY MS. REYES: Can you inform the Court what Exhibit 2
21 consists of?

22 A. Yes, this is an email that I had sent to Carrie Terry
23 expressing my dear concern to help her and to be involved in my
24 child's life.

25 Q. And when is that first email dated?

1 A. This one is dated October 25th.

2 Q. And then if you turn the page on Exhibit 2, what is
3 that second page on Exhibit 2?

4 A. I'm sorry?

5 Q. If you turn to the second page of Exhibit 2, what is
6 it -- what is that second page on Exhibit 2? What does that
7 appear to be?

8 A. This is another email communication and our attempt --
9 my email communication to Carrie, again, expressing my sincere
10 want to be in my child's life.

11 Q. And when is that dated?

12 A. November 12th.

13 Q. There's several other emails attached to Exhibit 2.
14 Do you recognize those emails?

15 A. Yes, I do.

16 Q. And what are those emails regarding?

17 A. The third page is an email with a letter from my
18 attorney in Colorado expressing through the letter my sincere
19 concern to be the caretaker for my child, or a co-parent with
20 her. The --

21 Q. Mr. Manzanares, when was that dated?

22 A. This email was dated November 15th --

23 Q. Okay.

24 A. -- of 2007.

25 Q. And so at some point you got an attorney involved in

1 Colorado; is that correct?

2 A. Yes.

3 Q. And when approximately was that?

4 A. It was approximately the end of September.

5 Q. Okay, and then what does the next email appear to be?

6 A. The next email is an email dated December 7th, again,
7 just asking her how she's doing, if there's anything I could do
8 to help her support her.

9 Q. And the following, the following email after that?

10 A. The following email is an email rece -- correspondence
11 from her back to me, and just again, my sincere hope to be in
12 my child's life, and to tell her and her daughter to have a
13 merry Christmas.

14 Q. And when was that dated, approximately?

15 A. December 19th.

16 Q. And then the last page of Exhibit 2?

17 A. That's just a happy new year email, and that's dated
18 December 31st.

19 Q. Did you make other attempts besides communicating
20 with Carrie Terry to insure that you were being a part of your
21 unborn child's life at that point in time, and securing your
22 child's interest?

23 A. Yeah, I tried to call. I did everything I could to
24 try to, you know, be involved in my daughter's life.

25 Q. Did you provide any financial support to Carrie Terry?

1 A. Yes.

2 Q. And your daughter?

3 A. Yes, I did.

4 Q. Okay, and I'm going to show you what's been marked as
5 Respondent's Exhibit No. 3.

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

7 THE COURT: You may.

8 Q. BY MS. REYES: Do you recognize this set of documents
9 which has been marked as Exhibit 3?

10 A. Yes, I do.

11 Q. And what are those documents?

12 A. They're copies of my bank statements and my checkbook.

13 Q. And who were these checks made out to?

14 A. Ms. Carrie Terry.

15 Q. And what are the dates and respective sums that are
16 issued on these checks?

17 A. The first one is dated I believe November 17th, 2007,
18 and is for \$150. The next document is an actual cashed check
19 dated December 20th for \$200 -- oh, cash, I'm sorry, cashed
20 December 20th, written on December 13th.

21 Q. And then following that?

22 A. The next one is a cashed check that was written on
23 December 19th for \$200.

24 Q. And the following document, the following check?

25 A. Is a cashed check that was written on January 7th for

1 \$250.

2 Q. And the following check?

3 A. A cashed check that was written on January 15th for
4 \$250.

5 Q. Then we have the final check?

6 A. The final check that was written on February 17th for
7 \$250.

8 Q. And at some point in time did you become aware that
9 Carrie Terry had given birth to your daughter?

10 A. I wasn't aware she had given birth until February 25th.

11 Q. And what is your knowledge based on representations
12 made by Carrie Terry and the petitioners as to your daughter's
13 date of birth?

14 A. February 17th.

15 Q. Okay, and this last check that you dated February 17th,
16 when did Carrie Terry cash that?

17 A. I believe that check was cashed -- it says right here
18 -- on February 26th.

19 THE COURT: What was the date, again, Counsel, where he
20 first became aware? February 26th?

21 MS. REYES: Of the -- his daughter's birth?

22 THE COURT: Of the birth.

23 MS. REYES: I an re -- I can have him restate that.

24 Q. BY MS. REYES: Again, Mr. Manzanares, when did you
25 become aware of your daughter's birth?

1 A. It was Monday February 25th.

2 Q. And how did you become aware of that?

3 A. I was called by a coworker of hers to congratulate me
4 on the birth of my daughter.

5 Q. Now, to back up just a little bit, Mr. Manzanares, you
6 indicated that you had an attorney -- you retained an attorney
7 sometime in September; is that right?

8 A. Yes.

9 Q. And what -- what efforts did you make through your
10 attorney in Colorado with regard to Carrie Terry and the
11 situation?

12 A. Well, my attorney made an effort to call her, and
13 speak with her about my desire to be in my daughter's life
14 and to be a part of my daughter's life. We also sent her --
15 my attorney also sent her a letter that was I believe dated
16 November -- I can't remember the exact date, but around
17 November 13th, stating my sincere desire to be a father to
18 my child, and my will and dedication to my daughter, and my
19 situation of how I would raise my daughter, whether it be co-
20 parenting or by myself.

21 Q. And in Exhibit 2, Mr. Manzanares -- I believe it's in
22 front of you there -- would the third email of Exhibit 2 be
23 reflective of you forwarding on a letter to Carrie Terry from
24 your attorney?

25 A. Yes.

1 Q. Okay, and when did you -- when did you forward that
2 information onto her?

3 A. Thursday, November 15th.

4 Q. Okay, and your understanding is -- below that is that
5 your attorney -- and what's your attorney's name in Colorado?

6 A. Ms. Emily Berkley.

7 Q. When did she send that information off to Carrie
8 Terry, according to this document?

9 A. I believe it was November 13th.

10 Q. Okay.

11 THE COURT: Counsel, you could inquire as to the
12 location of the conception and the year.

13 MS. REYES: Okay.

14 THE COURT: I don't think I heard either of those.

15 MS. REYES: I apologize.

16 Q. BY MS. REYES: Mr. Manzanares, with regard to the con
17 -- your daughter being conceived, where and -- where -- what
18 county did that occur in, and where, and approximately the date
19 again?

20 A. It would have occurred in Douglas County in Denver,
21 Colorado -- or I'm sorry, in Colorado. It would have been
22 June, middle of June.

23 THE COURT: Of '07?

24 THE WITNESS: Of '07 yes.

25 Q. BY MS. REYES: Okay. Mr. Manzanares, your attorney Emily

1 Berkley in Colorado, did she send any other correspondence out
2 to different individuals on your behalf, with regard to your
3 daughter, your unborn child?

4 A. I'm sorry, I don't --

5 Q. Okay. I'm going to show you what's been marked as
6 Respondent's Exhibit No. 4.

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

8 THE COURT: You may.

9 Q. BY MS. REYES: Do you recognize that document?

10 A. Yes, I do.

11 Q. And what is that document?

12 A. This is a letter to Mr. Kurt Olsen. The adoption
13 agency that was in Colorado -- that is in Colorado; and it's a
14 followup from a conversation that my attorney had with him.

15 Q. Okay, and then when is this letter dated?

16 A. This letter is dated November 13th, 2007.

17 Q. Have you ever had any communications with Kurt Olsen?

18 A. Yes, I have.

19 Q. And do you recall when those conversations would have
20 taken place?

21 A. Yes, I've had three conversations with him. The first
22 one would have been early September.

23 Q. Do you recall what was discussed in that early
24 September phone call with Kurt Olsen?

25 A. Yes. I called him to inform him that the mother to my

1 child may be calling him and asking for his assistance in an
2 adoption. I asked him, "What do I need to do as a father, and
3 what should I do as a father to stop this?"

4 Q. And was that the gist of your conversation on that
5 first date?

6 A. No, we -- we spoke about the situation, and I kind
7 of filled him in on what -- on our separation. He basically
8 stated that, you know, like the mother had stated to me that
9 this is a sacrifice that a lot of Mormon women feel that this
10 is something when they're not married that they should do and
11 have to do. He just kind of gave me some ideas of what I could
12 potentially do as a father to stop the adoption.

13 Q. Okay, now this would have been sometime in -- again,
14 when did you say? In September of 2007?

15 A. Yes.

16 Q. What -- at that point in time had Carrie Terry
17 informed you of what her position was regarding your unborn
18 child?

19 A. Yes.

20 Q. And what had she informed you about her position
21 being?

22 A. She informed me that she wanted to place the child for
23 adoption.

24 Q. And did you have conversations with her about that?

25 A. Yes, I did.

1 Q. And do you recall when the -- maybe the first
2 conversation about that would have taken place; would have been
3 before she moved out, or after she'd moved out?

4 A. Oh, yes, it would have been before. I believe it was
5 August 21st, is when she first told me about her thought of
6 placing the child for adoption.

7 Q. And what was your response to her thoughts?

8 A. I was pretty astonished. I was pretty amazed that
9 anyone would want to do that to their on child, and I disagreed
10 from day one.

11 Q. Did you make her aware of what your position would be
12 with regard to your unborn child?

13 A. Yes, I did.

14 Q. What was that?

15 A. I told her I would -- I would fight, and I would stop
16 at nothing to keep my child from being adopted.

17 Q. Did you express what you would-- what responsibilities
18 you would take on as the father of the child?

19 A. Absolutely.

20 Q. And what did you discuss with her about that?

21 A. I told her that I would be more than happy to raise my
22 child on her own if she felt she couldn't be the mother to our
23 child.

24 Q. So the first conversation regarding that took place
25 proper to her moving out?

1 A. Yes.

2 Q. Okay, and then subsequent to that, were there other
3 communications that the two of you had about -- about adoption
4 and you not willing to consent?

5 A. Yes, pretty much every communication we had since
6 then, she tried to convince me to consent to adoption.

7 Q. Okay, so going back now to the communications you had
8 with Kurt Olsen. When was your second conversation with him;
9 do you recall?

10 A. It had to have been the middle of September.

11 Q. And do you recall how that conversation took place;
12 was it by phone or in person?

13 A. It was via telephone.

14 Q. Okay, and do you recall what was discussed with
15 Mr. Olsen on the second conversation?

16 A. Our second conversation he had already spoken with
17 Carrie. He admitted that, and today he said, "But I haven't
18 opened up a case yet. So I can still communicate with you."
19 He stated to me that, you know, adoption is a very beautiful
20 thing, that you know, that it's, you know, it's very hard
21 for, you know, single parents nowadays, and that it is a good
22 thing, adoption. I told him, "Well, I don't want to consent to
23 adoption."

24 He told me that he would be sending me some type of
25 petition, or I could be receiving some type of petition from

1 the agency, VML; and I was a little concerned and confused as
2 to what type of petition. He never stated that, but that was
3 the gist of our conversation; and I communicated to him again
4 that I would not consent to adoption.

5 Q. Did you ever receive any paperwork or documentation
6 from Mr. Kurt Olsen or the entity you worked for?

7 A. No.

8 Q. And then when was your third conversation with him,
9 and in what form?

10 A. Our third conversation was at the end of September,
11 and it was via telephone.

12 Q. And who made that contact, and what was discussed?

13 A. I called Mr. Olsen, and I again told him who I was;
14 and he said he could no longer speak with me. I asked him why,
15 and he said there was a case opened. That Ms. Terry had opened
16 up a case with his agency.

17 Q. Okay. Mr. Manzanares, do you recall receiving an
18 email from Carrie Terry dated -- well, let me back up. Was
19 there a point in time when you filed paperwork in the State of
20 Colorado?

21 A. Yes.

22 (Cell phone ringing in courtroom)

23 MS. REYES: Your Honor, I apologize, just a moment.

24 Q. BY MS. REYES: And what did you file with the State of
25 Colorado?

1 A. I filed a petition for paternity, and an injunction to
2 adoption.

3 Q. Okay, and when, approximately, was that filed with the
4 Court?

5 A. It was approximately filed I believe January 13th.

6 Q. Okay.

7 A. Or I'm sorry -- yes, January 13th.

8 Q. I'm going to show you a copy of Respondent's Exhibit 5.
9 Do you recognize that --

10 A. Yes, I do.

11 Q. -- that document? What is that document?

12 A. This is my petition for paternity and injunction to
13 adoption.

14 Q. And what are you asking the Court to determine -- in
15 Colorado at that time, what were you asking the Court to do at
16 that time?

17 A. I'm asking the Court to establish my paternity -- my
18 rights as a father, and to stop all adoptions.

19 Q. Okay, and do you know if Carrie Terry was ever served
20 with that document?

21 A. Yes.

22 Q. Okay. I'm going to show you what's been marked as
23 Respondent's Exhibit No. 6.

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

25 THE COURT: You may. I was going to say, maybe we can

1 expedite this.

2 MS. REYES: Okay.

3 THE COURT: Counsel, do you have any objection to any
4 of her remaining exhibits, 1 through 15, except for the missing
5 pages of Exhibit 5?

6 MR. JENKINS: I don't, your Honor. That's the only
7 one I --

8 THE COURT: All right, all exhibits --

9 MR. JENKINS: -- I had (inaudible).

10 THE COURT: -- 1 through 15 are deemed admitted.

11 MS. REYES: Okay.

12 THE COURT: And we'll substitute in your complete copy
13 for Exhibit 5.

14 MR. JENKINS: Thank you.

15 THE COURT: Thank you. Go ahead.

16 MS. REYES: Thank you.

17 (Exhibit Nos. 2 through 15 received into evidence)

18 Q. BY MS. REYES: After her being served with your verified
19 petition and request for injunctive relief, did she respond?

20 A. Yes, she did.

21 Q. And how did she respond?

22 A. She responded as a response to the petition filed in
23 Colorado.

24 Q. Okay, and based on her response did you have any
25 concerns about her continuing to want to adopt your child out

1 to a family?

2 A. Yes, I did.

3 Q. Okay, and that was based off of her response?

4 A. Yes.

5 Q. Did you have any indication based on her response that
6 that would take place out of the State of Colorado?

7 A. No, I didn't. She denies in her response that she
8 would come to Utah to adopt our child --

9 Q. Okay.

10 A. -- in her response.

11 Q. Sometime thereafter, after the filing of that, you
12 received -- well, I guess it was before, actually, you received
13 an email correspondence from Carrie Terry on January 11th of
14 2008. Do you recall that?

15 A. Yes, I do.

16 Q. And what do you recall that that document -- or that
17 correspondence to you from Carrie states?

18 A. It tells me about her well-being. That her and the
19 baby are one, and that they're both doing fine. It also
20 alleges that she's going to visit her father for about a week;
21 and that she reiterates that pregnancy is a 40-week cycle, not
22 a I believe a 36 or 34-week cycle; and that she would be taking
23 some time at the end of March, which according to my records
24 would be when our daughter would be born; and that we'd speak
25 in April about adoption, my consent for adoption.

1 Q. Okay. After you filed your petition in Colorado, was
2 there a hearing scheduled with the Court there?

3 A. Yes.

4 Q. And when was that hearing to take place?

5 A. February 20th.

6 Q. Do you remember the approximate time?

7 A. At 9 a.m.

8 Q. Okay, and were you present in the Colorado Court on
9 February 20th at 9 o'clock?

10 A. Yes.

11 Q. Was Carrie Terry present in the Colorado Court at 9
12 o'clock?

13 A. No, she was not.

14 Q. Do you know where she would have been on February 20th
15 at approximately 9 o'clock?

16 A. She called the Court and said that she was in Utah,
17 visiting her father. That's the only way I knew where she was.

18 Q. And based on that telephone call did the Court -- what
19 did the Court in Colorado do with regard to that February 20th
20 hearing?

21 A. They stated that they would have to have both parties
22 at the hearing and that they -- and they scheduled another
23 hearing for March 5th.

24 Q. For March 5th, okay.

25 THE COURT: So I'm clear, did he hear her call on the

1 phone call where they were in Court? How does he know she
2 called the Court.

3 Q. BY MS. REYES: Okay. Were you present -- was that
4 telephone call received in open Court while you were there, or
5 was that received prior -- was that received -- did you hear
6 that communication?

7 A. No, I did not.

8 Q. Okay.

9 A. It was communicated to us through -- via clerk to my
10 attorney and to the Judge.

11 Q. In open Court did the clerk of the Court then state on
12 the record what her understanding was with regard to Carrie
13 Terry's ability or presence at the hearing? Was that on the
14 record; do you recall?

15 A. I do not recall.

16 Q. Okay. Was it known to the Court and your attorney --
17 was it made known to the Court and your attorney and yourself
18 on February 20th that Carrie Terry was in Utah with her ill
19 father and would not be attending the hearing?

20 A. Yes.

21 Q. Based on information received at a later date, what
22 is your understanding of what Carrie Terry was doing on
23 February 20th of 2008?

24 A. My understanding was 15 minutes prior to her appearance
25 in Colorado Court, that she had signed a consent for adoption.

1 Q. With regard to that February 20th date that was set
2 with the Colorado Court, what was your understanding of what
3 was to happen at that February 20th date in Colorado?

4 A. That a paternity action -- we would go through the
5 paternity action, and an injunction action would be filed to
6 stop any adoptions.

7 Q. Did you have other hearings in Colorado?

8 A. Yes.

9 Q. And do you recall having a hearing on February 29th of
10 2008?

11 A. Yes, I do.

12 Q. Were you present in the courtroom for that hearing?

13 A. Yes, I was.

14 Q. And was Carrie Terry present in the courtroom for that
15 hearing?

16 A. Yes, she was.

17 Q. Okay, and do you recall what the Court did at that
18 February 29th, 2008 hearing?

19 A. They granted my petition for paternity.

20 Q. And do you recall what the title of the order was
21 called that was issued from that?

22 A. No, I don't.

23 MS. REYES: Okay. Your Honor, if I may --

24 MR. JENKINS: Your Honor, I think the order can speak
25 for itself. I don't know that he needs to be telling us what

1 the order says. I think those -- that's one of the exhibits
2 here.

3 THE COURT: Thank you. Continue. Let me back up. Was
4 there hearing on the 27th as well?

5 THE WITNESS: Yes.

6 MS. REYES: On February 27th?

7 THE COURT: And 29th.

8 MS. REYES: Right.

9 THE COURT: Thank you.

10 Q. BY MS. REYES: Subsequent to the February 29th hearing
11 was there an additional hearing before the Judge in Colorado?

12 A. Before February 29th or --

13 Q. After February 29th?

14 A. Yes, there was.

15 Q. And do you recall what the date of that hearing was?

16 A. I believe it was March 2nd or 3rd. I can't remember
17 exactly off the top of my head.

18 Q. Okay, March 2nd or 3rd of 2008?

19 A. Yes.

20 Q. And are you aware of what happened at that hearing?

21 A. Yes.

22 Q. And what do you recall the Court in Colorado doing at
23 that hearing on February -- on March 3rd of 2008?

24 A. They -- the final order was signed, and the Honorable
25 Judge Woods spoke with Honorable Judge Hilder in Utah about the

1 order and what would happen. Due to the order, that my name
2 be placed on the birth certificate, and that all custody would
3 remain in Colorado -- or yes, all jurisdiction of custody would
4 remain in Colorado; and that the adoption would be in Utah.

5 Q. And you recall that the Court in Colorado spoke with
6 the Court in Utah, and determined that your name was to be
7 placed on the birth certificate?

8 A. Yes.

9 Q. Do you know if that's been accomplished yet?

10 A. I don't.

11 Q. Has your attorney in Colorado been attempting to -- to
12 get that done?

13 A. Yes, we've made several attempts to retrieve the birth
14 certificate.

15 Q. The guardian ad litem, Vivian Burgos, was she involved
16 in any of these hearings that you've referred to?

17 A. Yes.

18 Q. And do you recall which ones she would have been
19 present?

20 A. She was present at the February 20th, which was when
21 she was granted as the guardian ad -- guardian ad litem for our
22 daughter; and then she was present at the 27th hearing and the
23 29th hearing.

24 Q. Okay. Mr. Manzanares, you now understand -- well, who
25 do you understand to be the people attempting to adopt your

1 daughter?

2 A. Scott and Julissa Byington.

3 Q. And who are they?

4 A. They are the brother and sister-in-law to Carrie
5 Terry.

6 Q. And have you had a relationship with them during the
7 time that you and Ms. Terry were involved?

8 A. No, I have not.

9 Q. Have you ever spoken with either one of them on the
10 phone?

11 A. Yes.

12 Q. And what have your communications been with regard to
13 that phone contact?

14 A. My first conversation -- well, trying to recall if it
15 -- I did call Julissa as we were going through our separation,
16 to let her know my sincere concern for Carrie and our child.
17 We spoke just, you know, briefly about, you know, keeping our
18 heads up and just trying to support her as much as we can.

19 I had another conversation when I learned about the
20 premature birth of my daughter, not knowing where she was,
21 if she was still in a hospital in Utah. I had made every
22 attempt to contact every hospital in Colorado; and once I
23 found out through a letter of Mr. Jenkins that our daughter
24 -- my daughter was born prematurely in Utah, made every attempt
25 to find out where my daughter was born.

1 I did call Julissa on the 25th, the day I learned
2 about the premature birth of my daughter, that evening, and
3 she advised me to call Scott Byington. I called Scott Byington,
4 spoke with him, asked him if he knew about the whereabouts, the
5 health of my daughter. He stated that my daughter was fine,
6 and that I would be hearing from Carrie Terry's lawyer in time,
7 who I assume was Mr. Jenkins at the time; and that he also
8 stated, "What you think has happened has not happened," which
9 left me to believe I had no idea what that meant.

10 Q. During your first communication, you said you had a
11 communication with Julissa Byington --

12 A. Yes.

13 Q. -- at the time that you and Carrie Terry were going
14 through your separation --

15 A. Yes.

16 Q. -- was there any ever -- was there ever any reference
17 from Julissa Byington as to her desire to adopt --

18 A. Absolutely not.

19 Q. -- your unborn child?

20 A. No.

21 Q. Your communication with her was solely as basically a
22 support system for you and for Carrie?

23 A. More for Carrie. I just, you know, told her my
24 sincere love for Ms. Terry, and that I hoped that she would
25 be okay. Ms. Terry on several occasions communicated that she

1 hated herself for what had happened, and that she was, you
2 know, beside herself; and I was -- I feared that, you know,
3 she was going to do something outrageous. So I knew that she
4 communicated with Julissa on occasion. So I called her to
5 inform her of my sincere worry of Carrie.

6 Q. Did you have any other concerns about what Carrie
7 Terry may do with regard to her health or your unborn child's
8 health?

9 A. Absolutely. She threatened me with abortion on a few
10 occasions.

11 Q. Okay, and then the second communication, that was with
12 Scott Byington?

13 A. Yes.

14 Q. And that was on the 25th of February?

15 A. Yes.

16 Q. And that was on the 25th of February?

17 A. Yes.

18 Q. And was there any information given to you as to the
19 fact that he and Julissa were actually intending to adopt your
20 daughter?

21 A. Absolutely not.

22 Q. And what is your understanding as far as on the 20th of
23 February any orders from the Third District Court in Utah being
24 issued with cus -- with regard to custody of your daughter?

25 A. I understand that they were -- my daughter was placed

1 in temporary custody with the Byingtons.

2 Q. If I can take you back to have you recall the email
3 dated January 11th --

4 A. Yes.

5 Q. -- of 2008 that you received from Carrie Terry. You
6 indicated that that letter stated that she was going to be
7 visiting her father for approximately a week.

8 A. Yes.

9 Q. And that she was going to be coming back when -- I'm
10 assuming it meant Colorado, coming back --

11 A. Yes.

12 Q. -- to finish up something she had to do with her
13 employment; and then in April she wanted to speak with you
14 again about your consent?

15 A. Yes.

16 Q. Based on that email and her response to your verified
17 petition, did you have any knowledge that she had any intent to
18 come to Utah to place your child up for adoption?

19 A. No.

20 Q. Based on those documents, again, this email and her
21 verified response, did you have any idea that she would be
22 coming to Utah to reside?

23 A. No. As far as I've known she had not been back to
24 Utah the whole year we were together. So I -- no, no, I did
25 not know she would come to Utah.

1 Q. And so on -- on the 25th a coworker informed you that
2 -- congratulated you on the birth of your daughter?

3 A. Yes.

4 Q. And do you have any knowledge about when Carrie Terry
5 would have actually come back to the state of Colorado from
6 Utah after giving birth to your daughter?

7 A. I don't, but I assume if she was in work on Monday,
8 the 25th, it would have been either that day or the day before
9 that.

10 MS. REYES: Your Honor, I don't think I have further
11 questions for Mr. Manzanares at this time.

12 THE COURT: Thank you. Cross.

13 CROSS EXAMINATION

14 BY MR. JENKINS:

15 Q. Good morning, Mr. Manzanares. My name is Larry
16 Jenkins.

17 A. Good morning.

18 Q. I'm Counsel for Mr. and Mrs. Byington. Just wanted to
19 clarify a couple of issues or a couple of questions --

20 A. Sure.

21 Q. -- from questions Ms. Reyes asked of you. First of
22 all, what's your middle name?

23 A. Benito.

24 Q. Benito?

25 A. Yes.

1 Q. Okay. I know it was Ben on something, and --

2 A. Yes.

3 Q. -- but it's Benito, not Ben?

4 A. On my birth certificate it's Benito, yeah.

5 Q. Okay.

6 A. I use Ben.

7 Q. Okay, and you mentioned that you'd worked at 24 Hour
8 Fitness after leaving Wellbridge?

9 A. Yes.

10 Q. And how long were you at 24 Hour Fitness?

11 A. Approximately March -- middle of March until I started
12 with TCF National Bank. So it would have been -- I resigned --
13 I gave my two weeks August 15th, and worked those out until I
14 started my new position.

15 Q. Okay, so about four or five months?

16 A. Yes.

17 Q. Okay. Why did you leave 24 Hour Fitness so soon?

18 A. Oh, I was -- my ultimate goal was to get into finance
19 and banking. That's what my degree is in. I have an MBA in
20 Business. So that was my ultimate goal. I took the job at 24
21 Hour Fitness to basically keep myself employed until I could
22 find the right opportunity.

23 Q. Okay. You've got some emails that are attached there
24 as an exhibit to -- or I guess that's what -- they've been
25 handed to you. They're a binder of mine, an Exhibit 2?

1 A. Yes.

2 Q. You went through those just briefly with your Counsel?

3 A. Sure.

4 Q. I noted, as you went through the dates on them, the
5 first one was dated October 25th of '07; is that right?

6 A. Yes.

7 Q. And as I understand it, you and Ms. Terry no longer
8 lived together as of about September 9th, was it; is that what
9 you testified?

10 A. Yes, sometime in there.

11 Q. Okay, so the first email you've got as an exhibit is
12 dated October 25th. The next one is dated November 12th; is that
13 right?

14 A. Yes.

15 Q. And then the next one, which is dated November 15th,
16 is really just you forwarding on letters from your attorney to
17 Ms. Terry, correct?

18 A. Yes.

19 Q. Okay, and so then after that one, the next one is
20 several weeks later, December 7th; is that right?

21 A. Yes.

22 Q. Okay, and then you've got one dated December 19th, it
23 looks like?

24 A. Yes.

25 Q. And then one December 31st?

1 A. Yes.

2 Q. And Ms. Terry moved out September 9th; is that correct?

3 A. Yes.

4 Q. Okay, I need to ask you a few questions about the
5 checks that are together as Exhibit 3. Now, as far as you
6 know, does this represent everything that you paid to
7 Ms. Terry?

8 A. Yes.

9 Q. Okay, the first one of these was dated, it appears,
10 November 13th of '07?

11 A. Yes.

12 Q. Did she -- now, did -- now, I don't recall; did you
13 say she did nor did not cash this one?

14 A. I believe she did.

15 Q. But you just don't have a copy of the --

16 A. I didn't pull the copy of that one, no.

17 Q. Okay, so this one's November 13th. Is that about the
18 same time you got your lawyer involved, or is that -- or did
19 you get your lawyer involved earlier?

20 A. My lawyer was involved earlier.

21 Q. Okay, but the date here is -- I just noticed it was
22 fairly close to the time when your lawyer sent that email to
23 you to have it forwarded onto Ms. Terry; is that right?

24 A. Yes.

25 Q. Isn't it true, Mr. Manzanares, that you owed Ms. Terry

1 a significant amount of money after she moved out?

2 A. No.

3 Q. You didn't owe her anything?

4 A. Not that I'm aware of. I mean, she tried to tell me
5 I owed her money for things, but she owed me money for things.
6 We had no legal contract saying that we were in certain things
7 together except for our lease together.

8 Q. Okay, let me ask you, on the checks it has a -- has a
9 couple of names on there. It says, "Robert B. Manzanares," and
10 then it also says, "Elizabeth M. Manzanares;" is that right?

11 A. Yes.

12 Q. Now, is the Robert B. on the check, is that you?

13 A. Yes.

14 Q. Okay. Who is Elizabeth Manzanares?

15 A. That's my mother.

16 Q. Okay, and the address that's on the checks, whose
17 address is that?

18 A. That's my old residence, the house I owned in
19 Albuquerque, New Mexico.

20 Q. Okay. Now, this -- the money from this account, it
21 looks like it's a Wells Fargo account; is that right? It's a
22 little unclear.

23 A. Yes, it is.

24 Q. And the money in that account that went to Ms. Terry,
25 did that come from you or come from your parents?

1 A. Came directly from me.

2 Q. I believe you testified that Ms. Terry had talked to
3 you about adoption even before she left --

4 A. Yes.

5 Q. -- is that right? Remind me about when. Was that
6 August or --

7 A. That was -- yeah, about August 21st, 20th, sometime in
8 there.

9 Q. Somewhere thereabouts?

10 A. One of those two days.

11 Q. Okay, and then as I recall, you had some conversations
12 with Kurt Olsen at LDS Family Services; is that right?

13 A. Yes.

14 Q. You said you had three conversations with Mr. Olsen.
15 One was in early September; sounds like one mid-September,
16 about; and one the end of September?

17 A. Yes.

18 Q. Okay. Now, as I understand it, you indicated in your
19 first -- when you were testifying about your first conversation
20 with Mr. Olsen, you knew that it was an organization run by the
21 Mormon Church.

22 A. No, I did not. I had no idea.

23 Q. When did you find that out, because you -- in your
24 testimony you talked about that.

25 A. Well, I believe it was the second conversation.

1 Q. I mean, what did you think LDS Family Services was?

2 A. I had no idea. I'm not Mormon. I have no idea.

3 Q. Now, you said you called Mr. Olsen.

4 Q. Yes.

5 Q. Okay, so why, if you called Mr. Olsen, would you be
6 calling a place called "LDS Family Services"?

7 A. I had no idea what LDS even stood for, to be honest
8 with you.

9 Q. Well, where did you get the number from?

10 A. From Ms. Terry.

11 Q. Let me have you look at Exhibit 4 that you've got.
12 That's the letter from your attorney to Kurt Olsen; and I
13 assume you received a copy of that?

14 A. Yes.

15 Q. Okay, and then that -- was the purpose of that to just
16 reaffirm to Mr. Olsen that you had an interest in raising your
17 child?

18 A. Yes. Yeah, I did.

19 Q. And you wanted to stop the adoption?

20 A. Yes.

21 Q. Okay. Then you testified about your petition for
22 adoption. You've got that as Exhibit 5.

23 A. Yes.

24 MR. JENKINS: And your Honor, I'm not sure the best way
25 to --

1 THE COURT: If you want to --

2 MR. JENKINS: We could have it marked.

3 THE COURT: -- just introduce your petition as new
4 number, we'll --

5 MR. JENKINS: We could have it marked as --

6 THE COURT: -- note for the record --

7 MR. JENKINS: -- Petitioner's Exhibit 1.

8 THE COURT: -- that Exhibit 5 is missing a page; or you
9 can just continue with the number, if you want.

10 MR. JENKINS: Okay.

11 THE COURT: No. 16?

12 MR. JENKINS: Go to 16, okay. If I may approach the
13 clerk, your Honor?

14 THE COURT: Thank you.

15 Q. BY MR. JENKINS: Mr. Manzanares, could I have you look
16 at Exhibit 16?

17 A. Yes.

18 Q. Can you tell me what that is?

19 A. This is my petition for paternity and my injunction to
20 adoption.

21 Q. Okay, and can you see the date on the front that's
22 stamped, as far as what date it was filed?

23 A. Yes.

24 Q. What does that say?

25 A. January 16th.

1 Q. Okay, just wanted to get that in bec -- I have a
2 series of questions, and I want to ask you about a few
3 different things.

4 A. Sure.

5 Q. Okay, first of all if you'd look at your Exhibit
6 No. 8, which is the email you say you received from Carrie
7 Terry on January 11th.

8 A. I'm sorry, my Exhibit 8 or yours?

9 Q. Your exhibit -- it's Exhibit 8. It's als --

10 A. Your third one or my -- your 3 or this one?

11 MS. REYES: Your Honor, I apologize. This might help,
12 I'm sorry. I only provided Mr. Manzanares with a fwew of the
13 exhibits. Here's some, and I think the rest are up with the
14 clerk. I didn't go back and grab all of those. I could
15 provide all of those to the -- Mr. Manzanares, if the Court
16 prefers.

17 MR. JENKINS: That's okay. I feel like it would be
18 easier to refer to their --

19 THE WITNESS: Okay.

20 MR. JENKINS: -- numbering since we've already got them
21 in.

22 Q. BY MR. JENKINS: It's Exhibit 8. I believe you have
23 already testified about your receipt of that document.

24 A. Yes.

25 Q. Now, the date of that is January 11th; and as I

1 understand it, your petition was filed January 16th, correct?

2 A. Yes.

3 Q. Did the receipt of the email cause any activity with
4 you and your attorney to get the petition on file?

5 A. No, we had been working on the petition for quite some
6 time, since December.

7 Q. Let me ask you if you'd turn to the fifth page of the
8 -- of Exhibit 16, the one that I handed to you.

9 A. Okay.

10 Q. There are a couple of signatures on that page.

11 THE COURT: I'm sorry, Counsel. I was just a step
12 behind you. What page?

13 MR. JENKINS: I'm sorry, page 5 of Exhibit 16.

14 THE COURT: Thank you.

15 MR. JENKINS: Okay.

16 THE COURT: Please, go ahead.

17 Q. BY MR. JENKINS: Well, it looks like there's a few
18 signatures on that page. The first one up at the top of that
19 page, can you tell me whose signature that is?

20 A. That's Emily Berkley.

21 Q. And she's your attorney in Colorado?

22 A. Yes.

23 Q. As your attorney in Colorado does she basically speak
24 for you in the proceedings in Colorado?

25 A. Yes.

1 Q. And did she get the information to put in things that
2 were filed in Colorado, did she get that information from you?

3 A. Yes.

4 Q. Okay. Is that true of the petition, as well as other
5 things that she filed in Colorado?

6 A. Yes.

7 Q. Okay. Now, there's a signature in the middle of the
8 page. Is that your signature?

9 A. Yes.

10 Q. And it looks like your signature is notarized; is that
11 right?

12 A. Yes, sir.

13 Q. Okay. What I'd like to do is go through a few of the
14 paragraphs in the petition.

15 A. Sure.

16 Q. Just take a look at the things; and again, these are
17 things that were dated as of January 16th, 2008. At paragraph
18 8, could you read that for me?

19 A. "Although unmarried, the parties plan to raise their
20 child together until Mother consulted with officials of her
21 church, the Church of Latter -- the Church of Jesus Christ of
22 Latter Day Saints, hereinafter the Mormon Church. At that time
23 she ended her relationship with Father because she would not --
24 he would not convert to the Mormon faith."

25 Q. Okay, now do you know where the Mormon Church is

1 based?

2 A. Yes, I do.

3 Q. Where is that?

4 A. Salt Lake City, Utah.

5 Q. Okay, paragraph 9, could you read that for me?

6 A. "Mother was advised by the Mormon Church officials
7 that she should take the child available for adoption to a
8 married Mormon couple."

9 Q. Okay, can you read paragraph 10.

10 A. "After consulting with Mormon Church officials, Mother
11 informed Father that God had advised her that the child is not
12 hers, but is her sacrifice to a young Mormon couple who cannot
13 have a baby. She has since repeated this assertion to Father
14 on many -- to Father on many times."

15 Q. Okay, paragraph 12.

16 A. "Kurt Olsen of the Latter Day Saints Family Services
17 contacted Father and attempted to coerce him into signing
18 documents released to make the child available for adoption."

19 Q. Well, let me back up and ask you about this -- this
20 paragraph. I thought that from your testimony today that you
21 contacted Mr. Olsen.

22 A. Yes, I did.

23 Q. Okay, and I didn't hear anything in the conver --
24 about the conversations you had with Mr. Olsen about him trying
25 to coerce you into signing anything.

1 A. Well, he -- would you like me to speak about that or
2 -- yeah.

3 Q. What's your definition of coercion?

4 A. My definition is to convince somebody that adoption
5 was a beautiful thing and that it's what's right, and you know,
6 it's very hard for single fathers or single parents to raise
7 children nowadays, as he told me via phone.

8 Q. Okay, and that's your definition of coercion?

9 A. Yes.

10 Q. That's not just persuasion?

11 A. It's my definition of what he stated to me.

12 Q. Okay, you perceived it as he was trying to coerce you?

13 A. Yes.

14 Q. But you also said in here that he contacted you when
15 it was really the other way around?

16 A. Yes, I contacted him.

17 Q. Okay. Paragraph 13, if you could read that.

18 A. "Mother has repeatedly contacted Father to attempt to
19 persuade him to allow the child to be placed for adoption with
20 a Mormon family."

21 Q. Paragraph 14.

22 A. "Mother has contacted "Father's parents and others of
23 family members to convince them to persuade Father to allow the
24 child to be placed for adoption with a Mormon family."

25 Q. Now, down to paragraph 20, if you could read that.

1 A. "Father had filed his petition prior to the child's
2 birth because he has serious and founded concerns that although
3 the unborn child will not be legally available for adoption
4 pursuant to 9-5-203 CRS, Mother plans to surreptitiously make
5 the child available for adoption immediately upon his or her
6 birth. Mother has repeatedly asserted her intentions to give
7 birth --" or I'm sorry -- "to give the child up for adoption
8 via telephone and email; and continues to persuade Father to
9 authorize an adoption, referring to him as a 'chromosome
10 donor.' See Exhibits 3 and 4, emails from Mother to Father,
11 dated January 11, 2008 and December 15, 2007."

12 Q. Okay, also read paragraph 21 for me.

13 A. "Father has serious and founded concerns that Mother
14 will flee to Utah where she has family to proceed with an
15 adoption. Father therefore needs to establish immediate
16 jurisdiction in Colorado where the parties live and where
17 the child was conceived prior to the child's birth."

18 Q. Okay, so you know -- you knew that Ms. Terry had
19 family in Utah?

20 A. Yes.

21 Q. You knew that's where she was raised, or what?

22 A. Yeah, I knew she was raised in St. George, Utah.

23 Q. Okay, and you knew -- you knew her parents lived in
24 Salt Lake County somewhere, didn't you?

25 A. Sure.

1 Q. Okay. You'd met her parents before?

2 A. Yes.

3 Q. You had met the Byingtons before?

4 A. Yes.

5 Q. And you knew that Carrie and Scott Byington are the
6 only children in the family, right?

7 A. Yes.

8 Q. Okay, a fairly close family?

9 A. Like I say, I don't -- there's actually -- from what
10 I understood, there's eight -- or seven or eight kids from
11 previous marriages her mother has had. So, I mean, I know that
12 Scott and Carrie are brother and sister from the same father.

13 Q. Okay, you knew that Carrie's father was ill?

14 A. Yes.

15 Q. Okay, and so when she sent you the email on January
16 11th, saying she was going to be going to Utah to visit Father
17 in (inaudible) for a week, and you followed that up with your
18 petition with the paragraph 21, tell me what paragraph 21 in
19 your petition is based on.

20 A. That I had some concern that she may go to Utah.

21 Q. And what was that based on?

22 A. Based on the fact that she had family in Utah.

23 Q. Okay.

24 A. But I also had concerns with these other states that
25 she could have do -- have done this in any state. So I knew us

1 both being residents of Colorado is the reason I filed the
2 petition in Colorado.

3 Q. Okay. Now, if you could -- still in Exhibit 16, your
4 petition in Colorado, there were several exhibits attached to
5 that.

6 A. Yes.

7 Q. We've talked about I believe many of those. Exhibit 1,
8 can you tell me what that is?

9 A. That is the ultrasound.

10 Q. Okay, the one that you went to with her?

11 A. Yes.

12 Q. What's Exhibit 2?

13 A. Exhibit 2 is an email that I sent to her.

14 Q. It looks like it's several emails combined together,
15 because I don't see an Exhibit 3 tab until several pages back.

16 A. Oh, I'm sorry, yes --

17 Q. Okay.

18 A. -- this is the email correspondence.

19 Q. Okay. Is this the same email correspondence that
20 you've talked about today?

21 A. Yes.

22 Q. Okay, let me ask you. There's one -- one, two, three,
23 four, five pages back in Exhibit 2 to Exhibit 16; and the email
24 at the top of the page is dated November 21st. Do you see that
25 one?

1 A. Yes.

2 Q. Okay, now I would note that this is not an email
3 that's contained in your Exhibit 2 that you've talked about
4 here today --

5 A. Okay.

6 Q. -- but I want to direct your attention to -- well, I
7 guess first of all, the email at the top, what is that?

8 A. It's an email from me to Carrie.

9 Q. Okay, and what's it responding to?

10 A. It --

11 Q. Isn't it responding to the email below?

12 A. Yes, absolutely.

13 Q. Okay, and in the email below, it appears to me that
14 Carrie's telling you that she's going to visit her parents and
15 brother for Thanksgiving.

16 A. Yes.

17 Q. Is that right?

18 A. Yes.

19 Q. So where was she going for Thanksgiving?

20 A. I assume Salt Lake City.

21 Q. Okay. If you'd turn two more pages back, there's an
22 email series, one at the top, dated December 19th. The one at
23 the bottom is dated December 18th. Do you see that?

24 A. Yes.

25 Q. Now, I believe this one is contained in the emails

1 that are part of Exhibit 2.

2 A. Okay.

3 Q. Now, I note the email at the bottom of the page is
4 that this is an email from Carrie to you; is that correct?

5 A. Yes.

6 Q. Dated December 18th?

7 A. Yes.

8 Q. And she mentions in that email that she's going to
9 take Amaiya to St. George to visit her other grandparents for a
10 week; do you see that?

11 A. Yes.

12 Q. And do you know where St. George is?

13 A. Utah.

14 Q. Okay. Now, if you'd put back Exhibit 3 to your
15 petition, do you see that document?

16 A. Yes.

17 Q. And what is that document; isn't that the January 11th
18 email?

19 A. Yes.

20 Q. Okay. Now, if you'll flip back -- keep your finger
21 there, but flip back to paragraph 20 of your petition, that's
22 one of the paragraphs I had you read; do you see that?

23 A. Yes.

24 Q. And you've got in there, in the middle of that
25 paragraph, "Mother plans to surreptitiously make the child

1 available for adoption immediately upon his or her birth; do
2 you see that?

3 A. Yes.

4 Q. And at the end of that paragraph, you say, "See
5 Exhibits 3 and 4"?

6 A. Right.

7 Q. Okay, so that suggests to me that the basis -- or
8 part of the basis for your belief that she might make the baby
9 surreptitiously available for adoption is her January 11th
10 email; is that right?

11 A. Sure.

12 Q. All right, and then you also reference Exhibit 4 to
13 your petition, and if you'll flip back there, that is an email
14 similar to what you've talked about where she's continuing to
15 encourage you to consider adoption; is that right?

16 A. Yes.

17 Q. Okay. Now before I go further, in the -- talking
18 about the paternity proceedings in Colorado, I'd like to ask
19 you about a couple of other -- at least one other document.

20 MR. JENKINS: If I could have the clerk mark this as
21 Exhibit 17.

22 THE COURT: And if you would, Counsel, show me where
23 you found this Exhibit 3 that you're referencing in paragraph
24 20 --

25 MR. JENKINS: Oh, okay.

1 THE COURT: -- in our exhibits. I couldn't --

2 MR. JENKINS: Exhibit -- what that Exhibit 3, your
3 Honor, is attached to Exhibit 16.

4 THE COURT: Oh, all right.

5 MR. JENKINS: It's one of the original exhibits filed
6 with the paternity --

7 THE COURT: Got it.

8 MR. JENKINS: -- petition over there.

9 THE COURT: Yeah.

10 MR. JENKINS: And that's the e --

11 THE COURT: And that's dated January the 11th?

12 MR. JENKINS: Right, and that's the email where down
13 towards the minutes she men -- or towards the middle she
14 mentions she's going to go to Utah in February --

15 THE COURT: Got it.

16 MR. JENKINS: -- for a week, maybe longer.

17 THE COURT: Okay, so they're not two different
18 documents. They're really the same one.

19 MR. JENKINS: Exhibit 3 to the petition is the exact
20 same as Ex -- as --

21 THE COURT: Yeah.

22 MR. JENKINS: -- Exhibit 8 that they've admitted today.

23 THE COURT: Thank you.

24 MR. JENKINS: So yes, they are the same thing. I think
25 -- I just felt it was important to show that that was attached

1 to the petition and also actually referenced in the petition.

2 Q. BY MR. JENKINS: Mr. Manzanares, this is going a little
3 bit back in time from where we've been.

4 A. Okay.

5 Q. Can you -- you've been handed a document marked as
6 Exhibit 17. Can you tell me what that is?

7 A. Yes, this is a letter that I wrote to Carrie Terry
8 rough -- I believe she had already moved out. So it was
9 probably around September -- I want to say a little bit after
10 September 9th.

11 Q. Okay.

12 A. I don't remember exactly, but --

13 Q. So it appears from this that you would still like to
14 have been together, and sounds like --

15 A. No.

16 Q. No?

17 A. No, I don't --

18 Q. You don't think so? Okay. Who was the one that
19 decided to break up?

20 A. I loved Carrie. She's the mother to my daughter. I
21 mean, I won't -- there's no way I could stop -- not love the
22 person that has mothered or carried my child.

23 Q. Well, just let me ask -- this was written sometime
24 after she broke -- did she break up or did you break up?

25 A. She ended the relationship on her terms, yes.

1 MR. JENKINS: Okay, your Honor, I don't think I've moved
2 the admittance of Exhibit 16. I would move the admittance of
3 16 and 17.

4 THE COURT: Admitted.

5 (Exhibit Nos. 16 and 17 received into evidence)

6 MR. JENKINS: Okay. If I may approach the clerk to
7 have Exhibit 18 marked?

8 THE COURT: You may. Thank you.

9 Q. BY MR. JENKINS: Now, Mr. Manzanares, I've handed you a
10 document that's marked as Exhibit 18. Do you recognize that
11 document?

12 A. Yes, I do.

13 Q. Can you tell me what it is?

14 A. It's one of the many letters I sent along with my
15 checks.

16 Q. And what's the date of this one?

17 A. January 15th.

18 Q. Okay, so the day before the petition's filed?

19 A. Yes.

20 Q. And looks like second sentence there, can you see
21 where it says, "I am so sorry to hear about your father's
22 illness"?

23 A. Yes.

24 Q. Do you see that? Does that have reference back to the
25 January 11th email?

1 A. Yes.

2 MR. JENKINS: I would move the admission of Exhibit 18,
3 your Honor.

4 MS. REYES: No objection.

5 THE COURT: So admitted.

6 (Exhibit No. 18 received into evidence)

7 THE COURT: As long as we're on finances, just to keep
8 track, I had down a October 13th, 2007 payment of \$300 that's
9 attached as an exhibit. It's not in this exhibit book. It's
10 attached as Exhibit 5 to one of the memorandas. Should I give
11 you the dates of the payments that I have?

12 MR. JENKINS: I think that would be good.

13 THE COURT: I have October 13th, 2007, \$300; November
14 13th, 2007, \$150; November 17th, \$200; November 29th, \$100;
15 December 13th, \$200; December 19th, \$200; January 7th, \$250;
16 January 15th, \$250; January 17th, \$250. That was extracted from
17 the exhibits that were attached. So if I'm double counting, or
18 if I misread dates, if you both review that when you get a
19 chance and --

20 MR. JENKINS: Absolutely.

21 THE COURT: -- get them straight, and I can show you
22 the Exhibit 5 where you get that information from. So maybe
23 payments were for something else or whatever.

24 MR. JENKINS: Okay.

25 MS. REYES: I do believe that on Exhibit 16 that's

1 before the Court as well, which is my client's verified
2 petition with the Colorado Court, it appears that attached
3 to Exhibit 16 in this part is Exhibit 5 does reflect your
4 Honor's accounting that there was a payment made in October,
5 and somehow that hasn't been reflective in our -- the very
6 bottom you'll see in Exhibit 5.

7 THE COURT: Right.

8 MS. REYES: The first check, it looks like October -- I
9 think it's 13th. Is that what the Court's seeing? Then --

10 THE COURT: So those are the dates.

11 MS. REYES: Okay.

12 THE COURT: You guys take a look at them through the
13 break --

14 MS. REYES: Okay.

15 THE COURT: -- and let's see if we can agree on the
16 dates and the amounts.

17 MR. JENKINS: Okay.

18 THE COURT: All right, thank you. Sorry to interrupt.

19 MR. JENKINS: No problem, your Honor.

20 THE COURT: That's just one thing we wanted to have
21 (inaudible).

22 MR. JENKINS: Okay.

23 THE COURT: Can we take a short five-minute recess?

24 MR. JENKINS: Okay, whenever you'd like. We could do
25 it now. Now is fine.

1 THE COURT: Yeah, and then we'll go until noon.

2 MR. JENKINS: Okay.

3 THE COURT: All right.

4 MR. JENKINS: That will be fine.

5 THE COURT: Maybe five minutes. Give you a chance.

6 Take a break.

7 (Recess taken)

8 COURT CLERK: Court will be in session. You may be
9 seated.

10 THE COURT: Thank you.

11 Q. BY MR. JENKINS: Mr. Manzanares, I just want to back up
12 on a couple of things briefly, and then --

13 A. Sure.

14 Q. -- go and talk some more about some things in the
15 paternity proceeding. When you and Ms. Terry lived together,
16 who paid the rent?

17 A. Both of us.

18 Q. Okay, was that the case every month?

19 A. Yes.

20 Q. Even in the early months when you setill weren't
21 working?

22 A. Yes, correct.

23 Q. And isn't it true you really didn't go to work at 24
24 Hour Fitness until April?

25 A. It's hard for me to recall, but I do have all my

1 income statements, if we need to put those in; but I believe I
2 received the job in middle of March.

3 Q. You -- the Court before we left talked about some of
4 the check stubs, whatever, that are in evidence. There's the
5 October 13th one for \$300. Let me ask you, wasn't that payment
6 back for Ms. Terry purchasing a phone for you?

7 A. No.

8 Q. It wasn't?

9 A. It was -- she had bought a phone for me and kept
10 asking for money to pay her back for it.

11 Q. Uh-huh.

12 A. But as far as I knew, she had -- it was a gift.

13 Q. Is that kind of like the bike that you bought for her
14 that you sold? Didn't you sell a bike that you'd bought for
15 her for a present?

16 A. Yes, we --

17 Q. And you sold that so you could pay your rent?

18 A. So we could -- yeah, I could help pay some of the
19 bills that were for both of us.

20 Q. So it's okay for you to take back a present, but --

21 MS. REYES: Your Honor, I'm going to object just to
22 relevancy.

23 THE COURT: Sustained. Let's just focus in on what you
24 need to rather than --

25 MR. JENKINS: I understand.

1 THE COURT: -- getting into a quasi divorce.

2 MR. JENKINS: If I may approach the Court with another
3 exhibit that we've marked that we --

4 Q. BY MR. JENKINS: Mr. Manzanares, you've been handed the
5 exhibit that's been marked 19. Do you recognize this document?

6 A. Yes.

7 Q. Okay, can you tell me what it is?

8 A. Probably read it for a second. I believe it's part of
9 my petition for paternity.

10 Q. Okay, it says, "Case Information Sheet" on the front.

11 A. Okay.

12 Q. And if you turn to the second page, it's dated the
13 same day your petition was dated; is that correct?

14 A. Yes.

15 Q. And it appears to be signed by Ms. Berkley; is that
16 correct?

17 A. Yes.

18 MR. JENKINS: Okay. Your Honor, I'd move for admission
19 of Exhibit 19.

20 MS. REYES: No objection.

21 THE COURT: So admitted.

22 (Exhibit No. 19 received into evidence)

23 MR. JENKINS: Now, if I may approach with Exhibit 20.

24 Q. BY MR. JENKINS: Mr. Manzanares, you've been handed an
25 Exhibit 20. Can you tell me what this is?

1 A. Admission for paternity -- of pat --

2 Q. Have you seen this before?

3 A. Yes.

4 Q. And it looks like it's not executed; is that correct?

5 A. Yes.

6 MR. JENKINS: Your Honor, I'd move the admission of
7 Exhibit 20.

8 MS. REYES: Your Honor, if it's not an executed document
9 I don't know what the purpose of it would be. If it's --

10 THE COURT: Well, you -- can you give me an objection
11 that you're making formally, so I can rule.

12 MS. REYES: Your Honor, I would indicate that it's --
13 that it's hearsay; and because it's not signed by a party, I'm
14 not able to cross examine with regard to that.

15 MR. JENKINS: Your Honor, my response to that, and
16 I will talk to the witness about this, Exhibit No. 6 of
17 respondent's is a return of service that lists the different
18 things that the process server says were served on Ms. Terry.
19 I have a line of questioning I want to go into about that.

20 THE COURT: Well, are we disputing whether she did or
21 didn't sign it? Are you going to put it in for --

22 MR. JENKINS: No, no, we're not. She didn't sign it.
23 We're not disputing that. All I wanted is the document in to
24 show that this was served on her. They asked her to sign it,
25 but she didn't sign it; but that was served on her. What the

1 Exhibit 6 says is that she was served with the paternity
2 petition, the admission of paternity and the case information
3 sheet.

4 THE COURT: That's all you're trying to establish?

5 MR. JENKINS: Well, for now, but there is a line of
6 questioning I'd like to go into about that, because it's as
7 important to have each of those documents in there so that I
8 can show -- show a line of questioning I'd like to go to.

9 THE COURT: We don't have a foundation for it, do we?

10 MR. JENKINS: I guess the foundation is, is he's seen
11 it. It was the document served on Ms. Terry. We have the
12 return of service from --

13 THE COURT: Well, he's not asking that. I haven't
14 heard him testify to that. I haven't heard him say this is
15 the document --

16 MR. JENKINS: Okay.

17 THE COURT: -- that was served on him. I haven't heard
18 him --

19 MR. JENKINS: Okay, let me go back to that.

20 Q. BY MR. JENKINS: Mr. Manzanares, you have seen this
21 document before, Exhibit 20?

22 A. Yes.

23 Q. And where did you see this?

24 A. I believe in my attorney's office.

25 Q. Do you understand that this was the document served on

1 Ms. Terry, along with the petition for paternity?

2 A. I don't recall.

3 Q. You don't know for sure at all?

4 A. I don't know for sure.

5 MR. JENKINS: Okay, your Honor, I could get some
6 testimony from Ms. Terry later, but I could -- I would reserve
7 asking the Court to admit Exhibit 20 at this point; but I can
8 certainly get the foundation later.

9 THE COURT: All right.

10 MS. JENKINS: This --

11 MS. REYES: Your Honor, if I may -- I'm sorry. If I
12 may preserve just for the record a further admission of -- just
13 as to his relevant -- as to relevancy. She actually responded
14 to the petition. So I don't know what --

15 THE COURT: I understand.

16 MS. REYES: -- relevance it has.

17 THE COURT: Well, we'll see where he's going with his
18 questions --

19 MS. REYES: Okay.

20 THE COURT: -- when he gets there.

21 MS. REYES: Sure.

22 THE COURT: Okay.

23 Q. BY MR. JENKINS: Let me ask you, Mr. Manzanares, first
24 of all, if you'd look at Exhibit No. 16, which is your petition
25 for paternity, can you see anywhere in that document where it

1 tells Ms. Terry that there's a hearing set for February 20th?

2 A. I do not see it in this document.

3 Q. Okay, now, let me ask you to pull Exhibit 19, the case
4 information sheet. Can you see anywhere in Exhibit 19 where
5 there's a -- Ms. Terry is notified that there's a hearing on
6 February 20th?

7 A. I don't see anything either.

8 Q. Okay, now let -- I'll have you take Exhibit 20. It's
9 not admitted yet, but in that document can you see anything in
10 there that advises Ms. Terry that there's a hearing set for
11 February 20th?

12 A. I don't see anything.

13 Q. Okay, and now if you'll look back at your Exhibit 6,
14 now, as I understand this, and you tell me if I'm wrong, but
15 as I understand this, it says on February 1st the process server
16 gave Ms. Terry a verified petition for paternity, the admission
17 of paternity, and the case information sheet; do you see that?

18 A. Yes.

19 Q. And yet none of those documents had any information in
20 them about a hearing; is that right?

21 A. Right.

22 Q. But as I understand it, at some point Ms. Terry filed
23 a -- must have learned about a hearing, because she filed a
24 motion for continuance over there; is that right?

25 A. Yes.

1 Q. And you're aware that she did that?

2 A. Yes.

3 MR. JENSEN: Okay. If I may approach the clerk, your
4 Honor, with Exhibit 21. Thank you.

5 Q. BY MR. JENSEN: Okay, Mr. Manzanares, you've been
6 handed a document marked as Exhibit 21. Do you recognize this?

7 A. Yes, I do.

8 Q. Can you tell me what it is?

9 A. I believe it's her request for a continuance.

10 Q. Okay, and have you seen this document before?

11 A. This doc -- yes.

12 Q. Okay. If you'll turn to the -- well, first of all let
13 me have you look at the second page of it. Do you recognize
14 Ms. Terry's signature, kind of in the middle of the page there?

15 A. Oh, yes.

16 Q. Okay. The last page that's attached, it's kind of a
17 paragraph; do you see that?

18 A. Yes.

19 Q. Now, just prior to the salutation at the end, if you
20 go up one, two, three, four, five lines, there's a line that
21 begins, "I notified." Do you see that?

22 A. Yes.

23 Q. Okay. It says, "I notified the petitioner and his
24 lawyer before they filed the paternity petition of my father's
25 health issues and my travel plans;" do you see that?

1 A. Yes.

2 Q. And isn't it true that Ms. Terry had sent you an email
3 in January, January 11th, that said she was going to Utah for a
4 week to spend some time with her father?

5 A. Yes, she did.

6 Q. Okay.

7 A. There was no dates or travel itineraries given to us,
8 though, either.

9 Q. Well, I didn't ask that. I'm just wondering. She did
10 tell you that she was planning to go, correct?

11 A. Yes.

12 MR. JENKINS: Okay. Move the admission of Exhibit 21,
13 your Honor.

14 MS. REYES: No objection.

15 THE COURT: Okay, admitted.

16 (Exhibit 21 received into evidence)

17 MR. JENKINS: Okay, if I may approach the clerk again.
18 Exhibit 22.

19 Q. BY MR. JENKINS: Now, Mr. Manzanares, you've been
20 handed a document entitled -- or Exhibit 22. Do you recognize
21 this document?

22 A. Yes.

23 Q. Okay, can you tell me what it is?

24 THE COURT: Counsel --

25 THE WITNESS: This is the --

1 THE COURT: -- I'm sorry to interrupt.

2 MR. JENKINS: Oh, I'm sorry.

3 THE COURT: Do we have any witnesses in the back we
4 need to worry about excluding?

5 MR. JENKINS: I didn't know any witnesses -- they're
6 not witnesses on our side.

7 THE COURT: All right.

8 MS. REYES: They're not from ours either.

9 THE COURT: All right, go ahead and continue.

10 MR. JENKINS: Okay.

11 THE COURT: I just didn't want to go down that road.
12 Thank you.

13 MR. JENKINS: Those two are getting a merit badge, I
14 guess.

15 Q. BY MR. JENKINS: I've got to just put it back up. Tell
16 me what this document is again.

17 A. This is a response to a motion for continuance.

18 Q. Okay, and was that prepared by your Counsel?

19 A. Yes.

20 Q. Was it prepared by your Counsel with your input?

21 A. I don't recall.

22 Q. You had seen a document entitled -- or Exhibit 21, the
23 motion for continuance?

24 A. Yes.

25 Q. And you had had some discussion with your Counsel

1 about that, correct?

2 A. Yes. I'm trying to -- I'm trying to put dates and
3 times together when I received this.

4 Q. Mr. Manzanares, earlier you'd indicated that your --
5 that Ms. Berkley does speak for you there.

6 A. Yes.

7 Q. Can you -- first of all, can you -- well, first of
8 all, look at the front page of Exhibit 22. Can you tell me
9 what day this was filed?

10 A. February 15th.

11 Q. And in context, February 15th is, what, two days before
12 the baby was born?

13 A. Yes.

14 Q. And five days before Ms. Terry signed the consent to
15 adoption; is that correct?

16 A. Yes.

17 Q. Okay. On February 15th, your Counsel filed this in
18 the Court in Denver. Would you read paragraph 2 for me, and
19 for the Court.

20 A. "Respondent's purpose for attempting to delay the
21 (inaudible) proceeding is so that she may flee the state and
22 attempt to establish jurisdiction in Utah where her father
23 resides --" where her father resides.

24 Q. Okay. Now, if you would read paragraph 4 for me.

25 A. "Respondent's request as well as her response to her

1 petition for paternity is very indicative of her motive as
2 respondent's planning to give birth in Utah and place the
3 parties' unborn child up for adoption, possibly with the help
4 of the Mormon Church."

5 Q. Okay, so on February 15th, five days before a consent
6 to adoption is signed, you're filing a document in Denver that
7 tells the Court there that Ms. Terry wants to delay the
8 proceedings so that she may flee the state and attempt to
9 establish jurisdiction in Utah; is that correct?

10 A. Yes.

11 Q. Okay, and you're also telling the Court in Denver,
12 under paragraph 4, that "respondent is planning to give birth
13 in Utah, and place the parties' unborn child up for adoption,
14 possibly with the help of the Mormon Church," correct?

15 A. Yes.

16 Q. And that was filed with the Court in Denver?

17 A. Correct.

18 Q. By your attorney?

19 A. Correct.

20 Q. Now, paragraph 7 down there says that "Respondent has
21 never notified other side Counsel that her father was ill or
22 that she was planning to travel"?

23 A. Correct.

24 Q. What about the January 11th email that your Counsel
25 attached to the petition for adoption?

1 A. She states that she's going to visit her father,
2 depending on how he/things are.

3 Q. But you knew of the illness.

4 A. I knew he wasn't well, but his illness was (inaudible)
5 as far as I knew. I didn't know exactly how ill he was. I had
6 never met him.

7 Q. Now, read paragraph 9 for me.

8 A. "Petitioner, upon information and belief, asserts
9 that respondent plans to drive herself and her six-year-old
10 daughter to Utah to some undetermined point in the future
11 while pregnant, but that she does not have concrete plans for
12 travel."

13 Q. Okay, so Utah again?

14 A. Yes.

15 MR. JENKINS: Okay. Move the admission of Exhibit 22.

16 MS. REYES: Your Honor, I would object as to the fact
17 that it's not signed by Mr. Manzanares. We don't have Emily
18 Berkley here for questioning on that.

19 MR. JENKINS: Your Honor, it's a pleading filed in the
20 Court in Denver by Ms. --

21 THE COURT: Well, I know what it is. I understand
22 that. Can you give me a response to her objection?

23 MR. JENKINS: I guess I'm a little surprised that
24 they would even -- even object to the admission of it, where
25 it's been filed over there. This is -- I can certainly have

1 Ms. Terry testify that this is what she received later on. I'm
2 surprised that they would object to that. He's got -- he's
3 identified Ms. --

4 THE COURT: But it --

5 MR. JENKINS: -- Berkley's on it --

6 THE COURT: I mean --

7 MR. JENKINS: -- he's admitted that Ms. Berkley filed
8 it for him.

9 THE COURT: Okay, well, they're objecting for lack of
10 foundation, and the author isn't here. Do you have a response?

11 MR. JENKINS: I thought I'd established the foundation.
12 He's seen it. He's -- he talked to Ms. Berkley about preparing
13 a response. This was filed by his attorney over there.

14 THE COURT: Then I --

15 MR. JENKINS: He went through all of that.

16 THE COURT: I'm sorry, I may have missed him saying
17 that he knew this was filed.

18 MS. REYES: And your Honor, I don't think the specific
19 answers have been articulated by Mr. Manzanares. I think he's
20 read the statements that Mr. Jenkins has asked him to read; and
21 he's concurred with what they say. I don't think he's said
22 anything that would --

23 MR. JENKINS: May I attempt to lay some more foundation?

24 THE COURT: Please.

25 Q. BY MR. JENKINS: Mr. Manzanares, first if all, you had

1 see the document that we -- was previously admitted as Exhibit
2 21, correct?

3 A. Yes.

4 Q. Okay, and in that Exhibit 21, Ms. -- Ms. Terry moved
5 for a continuance of the hearing, correct?

6 A. Correct.

7 Q. And after receipt of that, you've testified that you
8 had talked to your lawyer about that; is that right, about her
9 motion for continuance?

10 A. I don't recall.

11 Q. You don't recall talking to your lawyer at all?

12 A. I'm sure we talked; but I don't know that we talked
13 about her continuance -- her request for a continuance.

14 Q. You don't think your lawyer would have consulted you
15 on this before she filed it?

16 A. I don't recall.

17 Q. On page 3 of this, is that -- do you recognize the
18 signatures on that page?

19 A. I'm sorry, which one?

20 Q. Page 3 of Exhibit 22.

21 A. I do.

22 Q. And whose signature is that?

23 A. Emily Berkley.

24 Q. Okay, and underneath her signature at the top of the
25 page, what does it say?

1 A. Directly underneath the signature?

2 Q. Underneath her signature what does it -- it has her
3 name printed twice, and then what does it say after that?

4 A. "Attorney for petitioner."

5 Q. And who is the petitioner in this matter?

6 A. Would be me.

7 Q. Okay, are you -- and Ms. Berkley was your attorney?

8 A. Correct.

9 Q. Okay. Do you have any disagreement with what's
10 contained in this document, Mr. Manzanares?

11 A. No.

12 Q. But you don't know if you saw it before it was filed?

13 A. I don't recall.

14 Q. Have you seen it since it was filed?

15 A. Yes.

16 Q. And when -- when was the first time you saw it?

17 A. It probably was sometime after the 17th, for sure.

18 Q. Okay, and did you have any reason to -- did you review
19 it at that time, when you first saw it?

20 A. Yes.

21 Q. Okay, and did you have any disagreement with anything
22 that was stated in it?

23 A. No.

24 MR. JENKINS: Okay. Again, your Honor --

25 Q. BY MR. JENKINS: I note, Mr. Manzanares, in paragraph 9

1 of this response, it mentions the paragraph -- "Petitioner,
2 upon information and belief, asserts that respondent plans to
3 drive herself and six-year-old daughter to Utah." Do you see
4 that?

5 A. Yes, I do.

6 Q. Where did -- where would have Ms. Berkley obtain that
7 information from?

8 A. It would have been from me.

9 Q. Okay, and do you believe -- do you know that this
10 document was filed with the Court in Denver?

11 A. I do now.

12 Q. Well, do you have any reason to believe it wasn't by
13 Ms. Berkley on your behalf?

14 A. No, I don't.

15 Q. And did she represent to you that it was filed on your
16 behalf?

17 A. Yes.

18 MR. JENKINS: Your Honor, move the admission of Exhibit
19 22.

20 MS. REYES: I would just reiterate our objection.

21 THE COURT: Which is?

22 MS. REYES: Lack of foundation, and it appears to be
23 hearsay.

24 THE COURT: Overruled. It will be admitted.

25 MR. JENKINS: If I may approach the clerk again,

1 Exhibit 23.

2 THE COURT: You know, Counsel, I'm going to change my
3 mind and keep that exhibit under advisement.

4 MR. JENKINS: Okay.

5 THE COURT: Okay?

6 MR. JENKINS: And that's Exhibit 22?

7 THE COURT: Yes.

8 MR. JENKINS: Okay.

9 Q. BY MR. JENKINS: Now, Mr. Manzanares, you've been
10 handed a document that's been marked as Exhibit 23. Do you
11 recognize this document?

12 A. Yes, I do.

13 Q. Can you tell me what it is?

14 A. This is our reply to -- my reply to their response for
15 petition for paternity.

16 Q. Did you assist in the preparation of this document?

17 A. I don't believe so.

18 Q. Did your lawyer talk to you about it?

19 A. Yes.

20 Q. Do you know when it was filed?

21 A. February 19th.

22 Q. Okay, and do you know for sure that it was filed?

23 A. Yes, I do.

24 Q. And let me ask you back on page 5 of this, there's a
25 signature, it appears to be of Emily Berkley; is that your

1 Counsel's signature?

2 A. Yes.

3 Q. And did you review this document before it was filed?

4 A. I don't recall.

5 Q. Okay. If you look at paragraph 16 of this document,
6 third sentence from that, it says, "However, she does not
7 directly deny his assertions in these two paragraphs, which
8 causes father to have great alarm. As the paragraphs assert,
9 the mother is planning to -- planning on surreptitiously making
10 the unborn child available for adoption, and are fleeing to
11 Utah." Do you see that?

12 A. Yes.

13 Q. Was that your belief on February 19th?

14 A. I'm sorry, ask me again. I'm confused.

15 Q. The information referenced in there, is that accurate?

16 A. Yes.

17 Q. Okay, that was your belief on February 19th?

18 A. Yes.

19 Q. That Mom was going to surreptitiously place the child
20 for adoption and/or flee to Utah?

21 A. Yes.

22 MR. JENKINS: Okay. I'd move the admission of Exhibit
23 23.

24 MS. REYES: Your Honor, again I would object that it's
25 not Mr. Manzanares' personal statement. It's a statement made

1 by Emily Berkley, who is not here for questioning.

2 THE COURT: I'll take that one under advisement. I'm
3 looking at the exception to the hearsay rule. I think there is
4 an exception when it's done in a representative capacity.

5 MR. JENKINS: I believe so.

6 THE COURT: Is there not? Let's see.

7 MR. JENKINS: I think one thing, your Honor, too,
8 Mr. Manzanares' has stated --

9 THE COURT: Manifests an adoption and believes that it
10 is true.

11 MR. JENKINS: Well, I asked him if he believed -- if
12 that was his opinion and if that's what he thought was going to
13 happen; and he said, "Yes."

14 THE COURT: Well, I take that as his oral testimony.
15 That's separate --

16 MR. JENKINS: No, I understand.

17 THE COURT: -- from whether the document comes in.

18 MR. JENKINS: I understand.

19 THE COURT: Go ahead, Counsel.

20 Q. BY MR. JENKINS: Mr. Manzanares --

21 THE COURT: Oh, excuse me. I'm going to allow both of
22 those exhibits in under 108(c)(e)(2)(b), statement of a party's
23 agent or servant within the scope of the agency or employment
24 made during the existence of a relationship.

25 MR. JENKINS: Thank you, your Honor.

1 THE COURT: So 22 and 23 are in.

2 MR. JENKINS: Great. Okay.

3 (Exhibit Nos. 22 and 23 received into evidence)

4 Q. BY MR. JENKINS: Mr. Manzanares, it's my understanding
5 that the Court in Colorado has determined that it doesn't have
6 jurisdiction over custody issues; is that your understanding?

7 A. No, that was not my understanding.

8 MR. JENKINS: Okay. Your Honor, if I may approach the
9 clerk, Exhibit 24. This one is actually certified.

10 THE COURT: I was going to say, because I've got another
11 one that says they did have jurisdiction.

12 MR. JENKINS: Well --

13 THE COURT: Earlier one.

14 MR. JENKINS: -- and I'll talk to him about that.

15 Q. BY MR. JENKINS: Okay, Mr. Manzanares, you've been
16 handed a document that's been marked Exhibit 24. Let me ask
17 you, were you at attendance at a hearing on July 7th with the
18 Court in Colorado?

19 A. No, I was not.

20 Q. You weren't there?

21 A. No.

22 Q. Okay, just your Counsel?

23 A. Just my Counsel.

24 MR. JENKINS: Well, your Honor, where this is a
25 certified copy of the minute entry of the Court, I would move

1 its admission. You'll notice the Court actually certified
2 both sides. There's apparently two different motions that
3 were involved, but on -- well, they both say, "Page 1." That's
4 kind of interesting.

5 One -- on one side of the page, however, it does
6 indicate that the Court there determined that it didn't have
7 authority under the UCCJEA to deal with the child's custody,
8 because it's not the child's home state in Colorado. Because
9 this is a certified copy, I would move the admission, based on
10 that.

11 THE COURT: I'll make a note for the record that the
12 minute entry of March the 3rd, 2008, Judge Robert Hilder,
13 indicates that he suggests that the UCCEAJ was codified in
14 Utah and was not applicable to adoptions.

15 MR. JENKINS: Right.

16 THE COURT: Okay.

17 MR. JENKINS: And by explanation for that, your Honor,
18 is the UCCJEA certainly wouldn't affect this proceeding; but
19 the Court in Colorado would have to look at the UCCJEA to see
20 if it has jurisdiction.

21 THE COURT: Well, I'll make that decision.

22 Q. BY MR. JENKINS: Okay. Mr. Manzanares, could you look
23 at your Exhibit No. 10?

24 A. Yes.

25 Q. And can you tell me what that is?

1 THE COURT: I'm going to say, this is not -- let me --
2 sorry to interrupt, but let me rule on Exhibit 24. I'll let
3 it in for the limited purposes of what it says, but not for a
4 final determination --

5 MR. JENKINS: Sure.

6 THE COURT: -- whether the Court in Colorado does or
7 does not have jurisdiction, because it has a lot of qualifiers
8 herein.

9 MR. JENKINS: Uh-huh, I understand.

10 THE COURT: All right.

11 (Exhibit No. 24 received into evidence)

12 MR. JENKINS: This was just the last word the Court
13 over there has said, and that's the purpose we've taken it.

14 THE COURT: Well, the last word as to whether or not
15 he's going to issue a warrant.

16 MR. JENKINS: Right.

17 THE COURT: Not whether or not it had jurisdiction of
18 the parties in Colorado.

19 MR. JENKINS: Well, and you know, we could argue about
20 that, your Honor, given the context, but --

21 THE COURT: Okay.

22 MR. JENKINS: -- it does -- it does specifically say
23 that Colorado is not the child's home state, which is a key
24 under UCCJEA jurisdiction, but --

25 THE COURT: But they've both determined that doesn't

1 apply; and he didn't -- both Judges.

2 MR. JENKINS: That it doesn't apply to the adoption
3 proceedings. It does apply to custody proceedings that aren't
4 adoption proceedings, and that's where the interesting
5 confusion comes up --

6 THE COURT: All right.

7 MR. JENKINS: -- with the UCCJEA. It's very confusing
8 on that score.

9 Q. BY MR. JENKINS: Mr. Manzanares, Exhibit 10 --

10 A. Yes.

11 Q. -- appears to be a final order of paternity; do you
12 see that?

13 A. Yes, I do.

14 Q. Okay, and on the second page of that document it talks
15 about what -- what the Court is ordering in this order; do you
16 see that?

17 A. Yes, I do.

18 Q. And there's -- there appear to be a couple of boxes
19 checked; do you see that? One that beings, "Petitioner, Robert
20 Manzanares"?

21 A. Yes.

22 Q. Okay, why don't you read that first one, "Petitioner,
23 Robert Manzanares."

24 A. "Petitioner Robert Manzaneres is the biological father
25 of the child and has all legal rights and responsibilities that

1 he is entitled to by law as to the child."

2 Q. Okay, and read the other one that says, "Other."

3 A. "Petitioner shall have his name listed as the
4 biological father on the birth certificate when the parties'
5 child is born."

6 Q. Okay. Does the Court talk about custody, visitation,
7 anything in that order?

8 A. No.

9 Q. Okay, now if you'll turn to Exhibit 11, can you tell
10 me what that is?

11 A. Order of March 3rd, 2008.

12 Q. Okay, and if you'll turn to the third page of this
13 document, if you'll look at paragraph 18, it says, "The Court
14 is not prohibited from granting the final order of paternity."
15 Do you see that?

16 A. Yes, I do.

17 Q. Okay, and paragraph 19 says, "The Court finds that
18 the father is the biological father of the parties' infant
19 daughter, and therefore grants his petition for paternity,"
20 and signs his final order of paternity." Do you see that?

21 A. Yes.

22 Q. Okay. Paragraph 20 talks about the birth certificate
23 issue that we referenced before, correct?

24 A. Yes.

25 Q. And then paragraph 21 says, "This case remains open,

1 not being dismissed; and Colorado retains jurisdiction over
2 this matter." Do you see that?

3 A. Yes.

4 Q. Do you see any discussion in here of custody or
5 visitation or anything like that?

6 A. I don't.

7 Q. Okay. You mentioned the guardian ad litem, Vivian
8 Burgos?

9 A. Yes.

10 Q. Was she appointed by the Court in Colorado?

11 A. Yes, she was.

12 Q. And as I recall your testimony, she was appointed
13 February 20th?

14 A. Yes.

15 Q. Are you aware if she's ever seen the child?

16 A. No, she has not.

17 Q. Okay. Has she ever met with the Byingtons about the
18 child?

19 A. I don't think so.

20 Q. Has she ever met with Ms. Terry about the child?

21 A. I don't believe so.

22 MR. JENKINS: Okay. Your Honor, that's all I have for
23 now.

24 THE COURT: Thank you. Redirect?

25 MS. REYES: Yes, your Honor.

REDIRECT EXAMINATION

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BY MS. REYES:

Q. Mr. Manzanares, there were several questions asked of you. However, I'm going to ask you about you've gone through some email correspondence, correspondence that you had with Carrie Terry while she was still bearing your unborn child?

A. Yes.

Q. And there were some references made to the amount of emails you had sent her over a period of time?

A. Yes.

Q. Can you explain to the Court why in particular there was the amount of emails that there was? Why was -- why didn't you inundate Ms. Terry with more, or why did you choose to send the amount of emails that you did? What's your response to that?

A. She told me this is a very stressful situation for her. On our last telephone conversation, which was I believe October 16th, she said -- she indicated that I was stressing her and bringing her to pre-contractions; and there was a threat of abortion or the baby being harmed, through our communications as she tried to convince me that adoption was the right thing, and that I would tell her no, that I will never consent.

Q. So with your regard to your communications with Carrie Terry, do you feel like the contact you were having with her at the time, that that was appropriate considering the information

1 she had related to you?

2 A. I do, because I didn't want to harm my child.

3 Q. Okay, and then there was some reference to the checks.
4 Let's see, we have an Exhibit No. 3; and then also attached to
5 Exhibit 16, which is a duplicate copy of your petition, there
6 are some checks attached to that.

7 A. Yes.

8 Q. So if we go through our Exhibit 3, and then if you
9 can look at Exhibit 16 at the same time; and I believe on
10 Exhibit 16 the checks are listed as Exhibit 5.

11 A. Okay.

12 Q. Do you have both of those before you?

13 A. Yes, I do.

14 Q. Okay. So it appears that in looking at Exhibit No. 16
15 and sub -- Exhibit 5 of that, it looks like there's a check
16 dated approximately October 13th of 2007 --

17 A. Yes.

18 Q. -- does that look correct? Is that a check that you
19 sent to Carrie Terry?

20 A. No, I delivered this one to her.

21 Q. You delivered it to her?

22 A. Yes.

23 Q. Okay, and what does the reference indicate there?

24 Does it indicate anything for baby?

25 A. It says, "Phone, baby, for Carrie."

1 Q. Okay, and so we have a check of October 13th of '07;
2 and then if you go down on both exhibits, we have the same one
3 next -- it looks like is that November 13th, or what --

4 A. Yes.

5 Q. And it appears that one was for \$150; and there's a
6 reference saying, "Not cashed" on the one that's attached to
7 your petition. Do you know if that one was actually cashed?

8 A. I don't believe so.

9 Q. Okay, and then if we go onto the next page in Exhibit
10 16, there is a check dated November 17th of 2000 -- looks like
11 for \$200; does that look correct?

12 A. Yes.

13 Q. And that's not reflective in our Exhibit 3; is that
14 true? If you look at the next one on Exhibit 3, it says,
15 "December 13th of '07."

16 A. Yes, it's not.

17 Q. So this November 17th check would be in addition to the
18 ones we have in Exhibit 3?

19 A. Yes.

20 Q. Then if we turn the page again on Exhibit No. 16, it
21 shows a check dated November 29th of '07?

22 A. Yes.

23 Q. Would that be in addition to the checks we have
24 submitted as Exhibit 3?

25 A. Yes.

1 Q. And then again if we turn the page on Exhibit 16, then
2 we show the check of December 13th, which is consistent with
3 what we have in Exhibit 3, correct?

4 A. Yes.

5 Q. If you turn the page once more, we have December 19th,
6 which is reflective in Exhibit 3?

7 A. Yes.

8 Q. Once again turn the page, and we have one that's
9 dated January of '07 -- of '08 -- January 7th of '08, and on
10 the exhibit attached to the petition, it says, "Not cashed,"
11 but on Exhibit No. 3 you actually found the cashed check --

12 A. Yes.

13 Q. -- of that, showing that it had in fact been cashed by
14 Carrie Terry?

15 A. Yes, because when I filed this one, she had not cashed
16 it.

17 Q. Okay.

18 A. And she didn't cash that one until January 18th.

19 Q. January 18th?

20 A. Yes, as it shows in Exhibit 3 of ours.

21 Q. Okay, and then we move onto the next one. It appears
22 that it's the January 15th. Also it says, "Not cashed" in
23 Exhibit No. 16, but then we do have the cashed check as an
24 exhibit to No. 3 --

25 A. Yes.

1 Q. -- of 250. That's the last one we have attached to
2 Exhibit 16, your petition; but then we do have an additional
3 check you wrote out to Carrie Terry on February 17th?

4 A. Yes.

5 Q. And that was cashed by her on February 25th?

6 A. The 26th.

7 Q. The 26th, okay. All right, so does that accurately
8 reflect the payments you made to Carrie Terry with those --

9 A. Yes.

10 Q. -- with those clarifications? Okay. You were asked
11 a question, Mr. Manzanares, about where the Mormon Church was
12 based. You were asked a question if you knew where the Mormon
13 Church was based. At the time you filed your petition in
14 Colorado, were you aware or had any concern about where the
15 Mormon Church was based?

16 A. No, I did not.

17 Q. Okay, your communications and conversations with Kirk
18 Olsen, did he ever mention the State of Utah to you?

19 A. Never.

20 Q. Mr. Jenkins referenced some provisions in emails that
21 Carrie Terry had sent to you indicating she wanted to place the
22 child, your child for adoption with a Mormon family. Are you
23 aware of any members of the Mormon faith that reside in
24 Colorado?

25 A. Oh, yes.

1 Q. How many people do you think you know, just off the
2 top of your head, who are --

3 A. One of my fraternity brothers; Dan, whose an attorney
4 in Colorado, Dan Shupe. He's a -- his father's a bishop.

5 Q. The fact that Carrie Terry may have been telling you
6 she wanted to place your child for adoption with a Mormon
7 family, did that make you believe that that would occur in
8 Utah?

9 A. No.

10 Q. In fact, if we look at our Exhibit No. 7, which is
11 Carrie Terry's response to your petition, if you look at our
12 Exhibit No. 7, and it would be paragraph 21 -- do you have
13 that, before --

14 A. Yeah, I just -- sorry, I have --

15 Q. -- or do you need me to provide you with -- yeah, I
16 understand.

17 A. -- so many (inaudible).

18 Q. I can provide you an additional copy if you think it
19 would be helpful.

20 A. I did (inaudible).

21 MS. REYES: Your Honor, if I may approach and show him
22 a duplicate copy of Carrie Terry's response to petition for
23 paternity.

24 Q. BY MS. REYES: If you can look at paragraph 21 of that
25 response, what does that response indicate?

1 A. Denied, draws legal conclusion.

2 Q. So based off of -- off of that response, do you
3 believe that Carrie Terry was going to go to Utah to live --
4 to deliver your child?

5 A. No, I did not. After getting this response, I didn't
6 believe she would do that.

7 Q. The different emails that have been referenced with
8 regard to Carrie Terry telling you she's going to Utah for
9 Thanksgiving to visit her family for Christmas, and when her
10 father was ill, did that cause you any concern that she was
11 going to be placing your baby up for adoption in Utah?

12 A. No.

13 Q. In fact, when she went to visit her family on
14 Thanksgiving, did she return?

15 A. Yes.

16 Q. And when she went to visit her family over Christmas,
17 did she return?

18 A. Yes.

19 Q. And then with regard to the January 11th email, doesn't
20 it specifically reference in there that she will be returning--

21 A. Yes.

22 Q. -- to Colorado?

23 A. It says she will be returning to finish the close
24 construction.

25 Q. And then taking some time off in March?

1 A. Yes.

2 Q. And then she was going to speak with you again in

3 April --

4 A. Yes.

5 Q. -- about your willingness to consent to the adoption?

6 A. Yes.

7 Q. And when did you believe your daughter was to be born,

8 according to the ultrasound?

9 A. On March 24th.

10 Q. So based off of that email did you have any cause for

11 concern that she was going to be placing your child for

12 adoption in Utah?

13 A. No.

14 Q. You filed a paternity action in Colorado, correct?

15 A. Yes.

16 Q. On what date, again?

17 A. I believe it was January 16th.

18 Q. And was that prior to Carrie Terry giving her -- or

19 relinquishing her rights to your daughter in Utah?

20 A. Yes.

21 Q. And in Colorado did you do everything you could to

22 satisfy the requirements of a birth father there?

23 A. Yes.

24 MR. JENKINS: Objection, your Honor, calls for a legal

25 conclusion.

1 THE COURT: Sustained. If you can rephrase.

2 Q. BY MS. REYES: Based on your attorney's representations
3 to you in Colorado, by filing the petition for adoption and
4 request for injunction, did you believe you were fulfilling any
5 requirements that the State of Colorado has for birth fathers?

6 MR. JENKINS: Objection, your Honor. She mentioned
7 petition for adoption. I also think it's hearsay what he heard
8 from his attorney, but --

9 THE COURT: Overruled. As to what he believes, I'll
10 take evidence.

11 THE WITNESS: Yes, I do believe I protected my rights
12 fully and completely in the State of Colorado.

13 Q. BY MS. REYES: And Carrie Terry had notice of this
14 proceeding, correct?

15 A. Yes, she did.

16 Q. And she had notice of a hearing that was to take place
17 and the proceeding, correct?

18 A. Yes.

19 MR. JENKINS: Objection, your Honor, we have no evidence
20 of that.

21 THE COURT: Which hearing?

22 MS. REYES: The one that she filed the motion to
23 continue.

24 THE COURT: Okay. Well, you just need to put on the
25 record which hearing --

1 MS. REYES: I'm sorry.

2 THE COURT: -- because we've got the 20th, the 27th --

3 MS. REYES: Right.

4 THE COURT: -- the 29th and March 3rd; and the postponed
5 one of March 5th. So --

6 MS. REYES: Sure, your Honor. I appreciate that.

7 Q. BY MS. REYES: Okay. With regard to the February 20th
8 hearing, the first hearing that was noted up in this case, you
9 understand that she had notice of this hearing?

10 A. Yes, I did.

11 Q. In fact, she filed a motion to continue the hearing?

12 A. Yes, she did.

13 Q. And in her motion to continue, she indicates she's
14 visiting her father in Utah; is that correct?

15 A. Yes.

16 Q. In fact, let me have you look at that quickly. If you
17 look at what's been marked as Exhibit 21 --

18 A. Okay.

19 Q. -- and it would be the last typewritten page, if you
20 look up on the fourth -- fourth line from the bottom, starting,
21 "Given," if you can read that paragraph right there, that
22 sentence, where it starts, "Given."

23 A. I'm sorry, I don't --

24 THE COURT: Show him.

25 THE WITNESS: Sorry.

1 MS. REYES: Sure. If I may approach?

2 THE WITNESS: Okay.

3 Q. BY MS. REYES: What does Ms. Terry represent to the
4 Court there in Colorado?

5 A. "Given his health and my pregnancy, I have a limited
6 time window in which to travel to see him."

7 Q. Okay.

8 A. "I will be available --"

9 Q. So -- I'm sorry. So based off of that sentence, do
10 you understand that she's anticipating on coming back to the
11 state of Colorado?

12 A. Yes.

13 Q. She's not placing anyone on particular notice that
14 she's there to give birth to your child?

15 A. Yes.

16 MR. JENKINS: Objection, calls for speculation.

17 MS. REYES: I can rephrase, your Honor.

18 THE COURT: Please.

19 Q. BY MS. REYES: Based on your opinion of the statement,
20 that sentence that Ms. Carrie prepared, do you believe that she
21 was going to be back to the state of Colorado?

22 A. I do.

23 Q. Returning?

24 A. I did.

25 Q. Bearing your -- bearing your child?

1 A. Yes.

2 Q. If I have you look at Exhibit No. 11, and that's the
3 document entitled, "Order of March 3rd of 2008," if you can read
4 paragraph 3.

5 A. "Utah is not the proper forum for Father's paternity
6 action, and Utah does not have jurisdiction over the action."

7 Q. The Colorado Court has determined that your paternity
8 action is appropriately filed in Colorado, correct?

9 A. Yes.

10 Q. And that it wouldn't have been appropriate for you to
11 file in Utah?

12 A. Correct.

13 Q. Vivian Burgos, have you spoken with her?

14 A. Yes, I have.

15 Q. And what contacts and communications have you had with
16 her?

17 A. She did a home visit with me to see that my house and
18 my living situation was fit for a newborn child.

19 Q. And did you make some efforts to be in contact with
20 her and to make that -- that meeting take place?

21 A. Yes, I called her just about every day to try to get
22 it scheduled, try to get a hold of her.

23 Q. And you're unaware if Carrie Terry has made any
24 efforts at all to speak with the guardian ad litem there?

25 A. No, I'm not aware.

1 Q. Okay, if I can direct your attention once again to
2 our -- well, I'll refer to Exhibit 16, which is your verified
3 petition, and then also her response to that -- Carrie Terry's
4 response, which is our Exhibit No. 7. Look at both of those.

5 A. Okay.

6 Q. I think I gave you my Exhibit No. 7 there?

7 A. Yes.

8 MS. REYES: Your Honor, if I may approach just briefly
9 to --

10 THE COURT: You may.

11 Q. BY MS. REYES: Okay, if you'd look at your petition,
12 Mr. Manzanares, paragraph 5, paragraph 6, and paragraph 7, can
13 you read paragraph 5?

14 A. "Mother lives in Denver County."

15 Q. And the response that Carrie Terry has to that?

16 A. "Agree."

17 Q. And then paragraph 6.

18 A. "The minor child is not yet born. Mother has been
19 pregnant for approximately seven months. An ultrasound dated
20 August 9th, 2007 stated that mother was approximately eight
21 weeks and three days pregnant at the time. See Exhibit 1,
22 ultrasound. Accordingly Mother is approximately 31 weeks 2
23 days pregnant as of January 16th, 2007."

24 Q. And her response to that?

25 A. "Agree."

1 Q. And then paragraph 7.

2 A. "Mother does not dispute that the child who is the
3 subject matter of this petition is the issue of petitioner
4 Father, hereinafter Father and Mother. The parties were living
5 together and were monogamous with each other -- monogamous with
6 each other at the time the child was conceived."

7 Q. Okay, and then if you look at the bottom of Carrie
8 Terry's response, the second page, there's an asterisk there.
9 It says there's a wherefore clause at the very bottom. Can you
10 read that paragraph right there?

11 A. "Wherefore the mother respectfully requests the
12 following of the Court. To support the fact that the unborn
13 baby and mother are one. Therefore all communication regarding
14 the mother's help and well-being are the same of the unborn
15 baby."

16 Q. So in her response, she acknowledges that she and the
17 baby are one?

18 A. Yes.

19 Q. Okay, and she admits and agrees to jurisdiction in
20 Colorado?

21 A. Yes.

22 Q. If I can have you look at our Exhibit No. 11, Exhibit
23 11, and look at page 3 of that exhibit, paragraph 17.

24 A. "In People vs. Estergard, 169 Colorado 445-475 P2d.
25 9 -- or 698 1969, the Colorado Supreme Court held that the

1 definition of a child in the Children's Code included an unborn
2 child in that the provision -- provisions of the Children's
3 Code are to be liberally construed."

4 Q. So with regard to your filing of the paternity action
5 prior to your child's birth, what's your understanding in
6 Colorado; is that permissible?

7 A. Yes.

8 Q. And do you believe you fulfilled all the requirements
9 in Colorado necessary to protect your rights as a father?

10 A. Yes, I do.

11 Q. And this was done prior to February 20th?

12 A. Yes.

13 Q. Are you desirous of parenting your daughter?

14 A. Absolutely.

15 Q. And have you been attempting to put Carrie Terry on
16 notice of this since you learned of your pregnancy?

17 A. Yes, I do.

18 Q. And do you believe you should be given that right as
19 the biological father of this child?

20 A. Absolutely.

21 Q. Are you prepared to take on all the responsibilities
22 necessary to insure that this child is going to have a great
23 place in life?

24 A. Absolutely, over and beyond.

25 Q. And that that would be even if you were to have to

1 parent this child on your own, without any help from outside
2 sources?

3 A. I'm more than prepared to be a single father.

4 Q. And with regard to your family support center, they're
5 in Colorado. Do you have family near you?

6 A. Yes, I do.

7 Q. And who is that?

8 A. My aunt.

9 Q. Okay.

10 A. Margie Martinez.

11 Q. And do you have other family besides her?

12 A. Yes, I have a bunch of cousins and another uncle.

13 Q. And with regard to your immediate family, your mother
14 and father, have there been plans made for -- in the event that
15 you were to be awarded custody of your daughter, is there plans
16 made to have accommodations for her to be closer to you?

17 A. Absolutely.

18 Q. And what have those arrangements been?

19 A. My mother is ready to retire at a moment's notice and
20 move to Colorado and be a full-time nanny for my daughter.

21 Q. And what would you anticipate as far as childcare for
22 your daughter, then?

23 A. That she will be nannied by my mother on a full-time
24 basis, and I will be her father and she will be my daughter.

25 Q. Knowing that the adoption of your daughter, the

1 petitioners, are a relative, a very close relative, a brother
2 and a sister-in-law of Carrie Terry, do you believe that she's
3 going to be able to have access to your daughter in the event
4 the Court were to not dismiss the adoption proceeding and grant
5 you custody?

6 A. Oh, yes. Yes, I do.

7 Q. She would be able to be involved in the rearing and
8 upbringing of her own daughter?

9 A. Yes.

10 Q. Whereas you would have no abilities to have contact or
11 communication or rearing of your daughter?

12 A. Yes.

13 Q. And do you believe that's in your daughter's best
14 interest?

15 A. No, I don't.

16 MS. REYES: Okay, your Honor, and I have further
17 evidence that I would put on with regard to custody. I'm
18 going to defer that at this time, but --

19 THE COURT: All right, let's take our noon recess,
20 then. Are you through with him; and I assume there's no
21 followup, so we can dismiss him?

22 MR. JENKINS: Depending on how procedurally you'd like
23 to go. I would like to follow up with a few questions.

24 THE COURT: On custody -- on the consent issue, sure.

25 MR. JENKINS: On the consent issue.

1 THE COURT: Sure, sure.

2 MR. JENKINS: But we can do that after the break, if
3 you want.

4 THE COURT: Sure. What time would you like to get
5 started again?

6 MS. REYES: Your Honor, we can be back whenever the
7 Court requests.

8 THE COURT: I have something away from the Court. We
9 could try 1:15. It be close, but probably safe to say 1:30 for
10 sure, but --

11 MS. REYES: Sure. We can be back at 1:15, and if the
12 Court's ready to proceed, we'll proceed.

13 THE COURT: Yeah, I'm willing to start at 1:15 --

14 MS. REYES: If not, we'll --

15 THE COURT: -- if we can get back.

16 MS. REYES: Sure. If not, we'll proceed at 1:30.
17 That's fine, your Honor.

18 THE COURT: All right. The Court will be in recess,
19 then.

20 MS. REYES: Thank you.

21 (Recess taken)

22 THE COURT: Back on the record in the case 082900089.
23 You may take the stand, please, and you're still under oath.
24 Counsel.

25 MR. JENKINS: Thank you, your Honor.

CROSS EXAMINATION

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BY MR. JENKINS:

Q. I just have a very few questions. This shouldn't take long. Mr. Manzanares, could you find Exhibit 16 there?

A. Yes.

Q. It's the petition for paternity filed in Colorado. First of all, I want to ask if you recall the testimony you gave to me in response to one of my questions about the phone that Ms. Terry had bought for you. Do you recall that?

A. Yes.

Q. And you told me that you didn't have to pay her back for that, there was no expectation of that; do you remember that?

A. Correct.

Q. Okay, if you could turn to Exhibit 5 of this Exhibit 16 that was filed with your -- your paternity petition in Colorado, the very first page there appears to be the note regarding that October 13th, \$300 check; do you see that?

A. Yes.

Q. Now, can you read down there at the bottom of that there's a note for what that was for?

A. "For baby for Carrie."

Q. Okay. Is it still your testimony that none of this money was for the phone?

A. I'm sure that -- well, some of it was, but not all of

1 it.

2 Q. But the phone cost over \$300, right?

3 MS. REYES: Your Honor, I'm going to object as to
4 relevancy.

5 MR. JENKINS: He's put in evidence --

6 THE COURT: Overruled.

7 MR. JENKINS: -- your Honor, about the amounts of money
8 he paid. I'm just trying to explain --

9 THE COURT: I've already overruled her objection.

10 MR. JENKINS: Oh, I didn't hear, I'm sorry. My hearing
11 aid's not turned up far enough.

12 THE COURT: I see. No problem. I speak softly.

13 MR. JENKINS: I do -- I actually do have a hearing
14 aid. I wasn't making a joke. I apologize. If I may approach
15 the clerk with another exhibit. What are we at; 25, I believe?

16 COURT CLERK: Yes.

17 THE COURT: Thank you.

18 Q. BY MR. JENKINS: Mr. Manzanares, on this document
19 marked Exhibit 25, I want you to look at the -- there appear
20 to be two handwritten notes. The bottom one we actually have
21 -- already had in an earlier exhibit, but --

22 A. Yes.

23 Q. -- these were copied on the same page. If you could
24 look at the top, is that your handwriting?

25 A. Yes, it is.

1 Q. And that's a note from you to Ms. Terry?

2 A. Yes, it is.

3 Q. Okay. What's the date on that?

4 A. December 19th.

5 Q. Okay, now in this note you talk about -- well, you
6 say, "I wanted to get this check to you before you leave to
7 St. George," and then a couple of sentences down, do you see
8 where it says, "I am giving you some extra money for you to use
9 as a Christmas present." Do you see that?

10 A. Yes.

11 Q. Okay, now if you'll turn to again back to Exhibit 16,
12 and go back -- go to Exhibit 5 of Exhibit 16 again where it's
13 all those checks and things that you had attached to it,
14 there's one back there dated December 19th. Do you have that
15 one?

16 A. Yes, I do.

17 Q. And can you read the "For" line at the bottom of the
18 check?

19 A. It says, "X-mas, Christmas and baby --" slash/baby.

20 Q. Okay. So as I read it, part of it's Christmas, part
21 of it's baby?

22 A. Yeah.

23 Q. Okay, so not all of it was for the baby?

24 A. Sure.

25 MR. JENKINS: Okay. I'd move for the admission of

1 Exhibit 25.

2 THE COURT: Any objections?

3 MS. REYES: No.

4 THE COURT: So admitted.

5 (Exhibit No. 25 received into evidence)

6 Q. BY MR. JENKINS: Now, just a couple of other things,
7 Mr. Manzanares. If you could find Exhibit 23, as I recall
8 this was a reply to Ms. Terry's response to your petition in
9 Colorado; is that correct?

10 A. Yes.

11 Q. Okay, this was prepared by your attorney, Ms. Berkley?

12 A. Yes.

13 Q. Before we broke for lunch, your Counsel asked you some
14 questions about your understanding of Ms. Terry's responses to
15 paragraphs 20 and 21 of your petition; do you remember that?

16 A. Yes.

17 Q. Could you turn to paragraph 16 of this reply. Could
18 you read paragraph 16, the entire one?

19 A. Yes. "Mother denies paragraphs 20 and 21 on the basis
20 draws for a legal conclusion. Father is not sure what basis
21 Mother believes this provides for her denial. However, she
22 does not directly deny his assertions in these two paragraphs,
23 which causes Father to believe -- to have great alarm, as the
24 paragraphs assert that Mother is planning on surrepti --" I
25 can't ever say that word -- "surreptitiously making the unborn

1 child available for adoption and/or fleeing to Utah.”

2 Q. Okay, and this document was dated February 19th; is
3 that correct?

4 A. Yes.

5 MR. JENKINS: Okay. That’s all I have, your Honor.

6 THE COURT: Thank you. Anything further?

7 MS. REYES: Just a couple.

8 REDIRECT EXAMINATION

9 BY MS. REYES:

10 Q. Mr. Manzanares, looking again at Exhibit No. 23 that
11 you just responded to --

12 A. Yes.

13 Q. You were asked to -- to read paragraph 16, and you
14 were asked what date it was filed with the Court. How do you
15 know what date it was filed with the Court; do you hand-deliver
16 it to the Court?

17 A. I did not.

18 Q. How would you know that it was filed on the 19th?

19 A. Just by how it’s stamped.

20 Q. Okay, and do you recall if you observed -- or if you
21 viewed this document prior to your Counsel filing it with the
22 Court, before or sometime thereafter; do you know if and when
23 you reviewed this document?

24 A. I don’t recall. It was like a still lot of confusion
25 as we were filing stuff and trying to get things in order to

1 protect my rights in Colorado before any of this. So --

2 Q. And then it was shortly after, on February 25th, just a
3 few days after this, that you learned that Carrie had actually
4 given birth to your daughter in-- given birth to your daughter;
5 isn't that true?

6 A. Yes.

7 Q. And so are you -- is it your testimony that you're not
8 sure when you -- if and when you reviewed this document that
9 your attorney prepared?

10 A. Yes.

11 Q. And you had a -- you had some trouble even reading
12 through that paragraph. Would this necessarily be language or
13 information that you would have provided to your attorney; do
14 you know?

15 A. No.

16 MR. JENKINS: Objection, your Honor. How do you --
17 it goes to a lot of speculation and questions about what his
18 attorney might or might not interpret.

19 THE COURT: Sustained.

20 MS. REYES: Your Honor, and I would just renew my
21 objection --

22 THE COURT: I under --

23 MS. REYES: -- to the introduction of this exhibit, due
24 to the fact that Ms. Berkley isn't available to question about
25 it, and she's the one that actually signed the document, not my

1 client. So -- your Honor, if I may, on -- on just the issue of
2 consent, if I can just ask him a couple of quick questions
3 before we move onto the issue of -- the issue of custody, if
4 I may?

5 THE COURT: Well, I think what we are going to do is
6 finish hearing all of the rest of the other witnesses on the
7 custody issue before we even --

8 MR. JENKINS: On the consent issue.

9 THE COURT: -- or on the consent issue before we move
10 onto the custody issue.

11 MS. REYES: Okay.

12 THE COURT: Then we can --

13 MS. REYES: If I just have a few more questions with
14 regard to the consent issue for Mr. Manzanares, may I proceed
15 right now?

16 THE COURT: Sure. I would have thought you would have
17 brought them up on direct, but if --

18 MR. JENKINS: That's what I don't understand.

19 MS. REYES: Your Honor, I did -- I did to the most --
20 to the --

21 THE COURT: Okay, you --

22 MS. REYES: -- for the most part. I just have some
23 additional questions about his efforts.

24 THE COURT: Take -- take two minutes.

25 MR. JENKINS: As long as I can follow up on them.

1 MS. REYES: Okay.

2 THE COURT: Take two minutes.

3 Q. BY MS. REYES: Okay. Mr. Manzanares, in addition to
4 the financial aspect and the emotional aspect of supporting
5 Carrie Terry and your unborn baby during this process, what
6 other efforts and things have you -- have you done? How many
7 times have you visited Utah?

8 A. I've been to Utah three times.

9 Q. And when did you come to Utah?

10 A. I came for our first hearing on July 1st, and then --

11 Q. And how long were you here on July 1st? How long did
12 you remain in Utah?

13 A. I remained in Utah until July 3rd.

14 Q. And then when did -- when was the second trip to Utah?

15 A. On July 6th, in order to pick up my daughter on July 7th.

16 Q. Okay, when that didn't happen, when did you actually
17 go back to Colorado?

18 A. July 8th --

19 Q. And then --

20 A. -- or 9th. I believe it was the 9th.

21 Q. The 9th?

22 A. Yes.

23 Q. Okay, and then have you made a -- this is your third
24 trip for this hearing today?

25 A. Yes.

1 Q. Okay, and then have you been required to take time off
2 of work to attend these hearings?

3 A. Yes, I have.

4 Q. And have you made arrangements in the event that the
5 Court were to grant you custody of your daughter, have you made
6 arrangements to have some time off to --

7 A. Yes.

8 Q. -- to take care of her and bond with her?

9 A. Absolutely. My work's given me three weeks off, and
10 then they would allow me to apply for an FMLA. So I wouldn't
11 be -- I would be like being a single mother. I would be
12 granted two to three months to spend time bonding with my
13 daughter, which I haven't had the opportunity to do so.

14 Q. Okay, and then the emotional aspect of this whole
15 proceeding and process, how has that affected you?

16 A. It's been a roller coaster. I mean, this is -- this
17 is my daughter we're talking about, and I want to do whatever
18 it takes to be in her life. I feel like I've protected my
19 rights.

20 I mean, there's been a lot of sleepless nights
21 worrying, and knowing that my daughter was prematurely born,
22 and having the mother of my daughter give me an email that
23 clearly states that, you know, she would be coming back and
24 talking to me in April about my consent to adoption, expecting
25 that she would allow me to be a part of my daughter's life, you

1 know. I mean, obviously if there's fraudulent stuff, I would
2 like to go there with this, if possible.

3 MS. REYES: Okay. That's all I have, your Honor.

4 THE COURT: Thank you.

5 MR. JENKINS: Your Honor, I don't see any need to --

6 THE COURT: Thank you. You may step down.

7 Next witness, please.

8 MS. REYES: Your Honor, we would call Carrie Terry.

9 COURT CLERK: Please raise your right hand. You do
10 solemnly swear the testimony you are about to give will be
11 the truth -- excuse me -- the whole truth and nothing but the
12 truth, so help you God?

13 THE WITNESS: I do.

14 COURT CLERK: Take the stand, please.

15 CARRIE TERRY,

16 having been first dully sworn,

17 testified as follows:

18 DIRECT EXAMINATION

19 BY MS. REYES:

20 Q. Ms. Terry, can you state your full name for the Court.

21 A. Carrie Rachelle Byington Terry.

22 Q. And where do you currently reside?

23 A. My temp -- my permanent residence is in Colorado.

24 Q. Okay, and when you say "permanent residence," what
25 does that mean to you?

1 A. My permanent residence means that's where I work.

2 Q. Okay, and how long have you been in Utah on this trip?

3 When did you get to Utah?

4 A. I have been here for four days.

5 Q. Okay. Now, if I can have you look at, let's see, it
6 would be our Exhibit No. 8, I believe. It's the email that you
7 sent to Robert Manzanares dated January 11th of 2008.

8 A. Um, it skips it up here.

9 MS. REYES: Your Honor, may I approach and see if I can
10 locate that for her?

11 THE COURT: You may.

12 MS. REYES: Thank you.

13 Q. BY MS. REYES: Do you recognize this document?

14 A. I do.

15 Q. Did you write this let -- this email correspondence?

16 A. No, I typed it.

17 Q. Okay, but it came from you?

18 A. Yes.

19 Q. To Robert Manzanares?

20 A. Correct.

21 Q. And in this email you tell him, if I can have you
22 look at, let's see, the eighth line from the bottom, on the
23 very right-hand side it starts with, "I will be flying." It
24 says there that "I will be flying to Utah to visit my father
25 in February for a week, maybe a little longer. It depends on

1 how he or things are." When did you fly out to Utah?

2 A. I ended up not flying.

3 Q. Okay, how did you get to Utah and when did that occur?

4 A. I drove on February 14th.

5 Q. Okay, and when did you get to Utah?

6 A. February 14th.

7 Q. Okay, and how long did you end up staying in Utah?

8 A. Until February 24th.

9 Q. Okay, and have you been represented by an attorney in
10 Colorado?

11 A. Yes.

12 Q. And who has that been?

13 A. It currently is Derek.

14 Q. Okay, and who else has represented you in the past in
15 Colorado?

16 A. No one.

17 Q. Okay. Is Mr. Williams, is he -- do you know if he's
18 able to practice law in Colorado, or does he have a license to
19 practice law; do you know?

20 A. I'm sorry, did you ask me if -- you asked me if I had
21 a lawyer in Utah?

22 Q. Okay, Colorado, I apologize. It's my fault. Do you
23 have an attorney in Colorado?

24 A. No.

25 Q. Have you ever stated on the record in Colorado that

1 you've had an -- that you had an attorney?

2 A. That I had an attorney in Colorado? No.

3 Q. You've never stated that Larry Jenkins was your
4 attorney to the Court in Colorado?

5 A. You asked me if I had an attorney in Colorado and if
6 I stated that I had an attorney in Colorado. No, I have never
7 stated that I had an attorney in Colorado.

8 Q. Have you ever stated that Larry Jenkins represents
9 you to the Court in Colorado?

10 A. I did say that Larry was helping me, yes.

11 Q. Okay, and when did you first get in contact with
12 Mr. Jenkins?

13 A. I would say the end of November.

14 Q. Okay, and in what capacity was he representing you?

15 A. Would you rephrase the question, please.

16 Q. Why did you seek out his services? What were you
17 asking him to help you with?

18 A. I was asking for advice.

19 Q. Advice about what, in particular?

20 A. Adoption laws.

21 Q. Okay. Was he able to give you advice? I'm not asking
22 you what it was. I'm just asking if he was able to give you
23 advice?

24 A. Sure.

25 Q. Okay, and did you rely on that advice when you were

1 corresponding with Robert Manzanares?

2 A. No.

3 Q. Okay. So when you were in Utah over the time period
4 of February 14th until the 24th, what took place; what events
5 took place?

6 A. Would you say that again?

7 Q. From the time of February 14th until you left Utah from
8 your visit with your father on February 24th, what events took
9 place, if anything significant?

10 A. The birth of my child.

11 Q. Okay, and how did that take place? What -- what
12 happened? Was that a premature birth? Did you go into
13 premature labor?

14 A. She was -- yes.

15 Q. It wasn't anticipated that you were going to deliver
16 your daughter during that time period, correct?

17 A. We had put a birth plan into place.

18 Q. When you say "we," who are you referring to?

19 A. My brother and I. I use -- had him help me with
20 emotional support.

21 Q. So give me in detail what your birth plan was.

22 A. I had spoke with a midwife here probably beginning in
23 December. I had spoke with multiple doctors here, and I chose
24 to go with a midwife, and we discussed options as far as visits
25 that they would need to see me before the anticipated time of

1 birth to make sure that I was healthy and good, and that the
2 baby was healthy.

3 We put into place contacts -- people, contacts,
4 hospitals. I had to check with my insurance which hospitals
5 were covered with my insurance. I had to check with my
6 insurance which doctors or midwife was covered under my
7 insurance.

8 Once I located a hospital, and the midwife that I
9 wanted was under my insurance, once I located that that was
10 good and clear, then I continued correspondence with her, and
11 contact with her so that I would be prepared when I came out to
12 visit my father.

13 Q. So you were planning on giving birth to your daughter
14 during the time period of February 14th to the 24th?

15 A. I don't know if you're a parent, or if you've had any
16 children --

17 MS. REYES: Your Honor, if I could just have her answer
18 the question.

19 THE COURT: Yeah, answer the question that she asked
20 you, please, "yes" or "no."

21 THE WITNESS: I don't think you can anticipate when
22 you're going to have birth.

23 Q. BY MS. REYES: Okay, so you went into premature labor,
24 then?

25 A. Yep.

1 Q. You didn't intend to come to Utah to give birth to
2 this child?

3 A. Could you rephrase your question, please?

4 Q. You didn't intend to give birth to this child when you
5 came to Utah?

6 A. I did intend to give birth to this child when I came
7 to Utah.

8 Q. When was your due date?

9 A. March 17th.

10 Q. So this would have been approximately at least --
11 about approximately four weeks early --

12 A. Correct.

13 Q. -- for the birth of your daughter?

14 A. Correct.

15 Q. And how were you intending to give birth to your
16 daughter four weeks early?

17 A. You didn't ask me when. You just said did I intend to
18 give birth to my child in Utah; and I said, "Yes."

19 Q. Okay, I apologize. My previous question incorporated
20 that. You asked me to rephrase it. When you came to Utah on
21 February 14th, did you intend to give birth to your daughter
22 during that period of time, between February 14th and the time
23 you were to return to Utah on the 20 -- I mean, to Colorado on
24 the 24th?

25 A. I didn't know when I was going to return. That was

1 undecided, until obviously when I returned. When I left
2 Colorado on February 14th, no, I did not intend to go into
3 labor.

4 Q. Okay, did you intend to come to Utah for an indefinite
5 period of time until you gave birth to your daughter when you
6 left Colorado on February 14th?

7 A. No, I intended to go back and then come back at the
8 end of March, as I disclosed in my email, to give birth then,
9 when the baby was due.

10 Q. You also state in your email to Mr. Manzanares that
11 you would again speak with him in April about his willingness
12 to consent to the adoption; isn't that true?

13 A. Correct.

14 Q. Was that in fact your intention?

15 A. Could you restate the question?

16 Q. Was that in fact your intention? Were you intending
17 on doing that, or was that just something you were putting in
18 this email?

19 A. Intending what?

20 Q. To communicate with him about him consenting to the
21 adoption in April?

22 A. Yeah.

23 Q. Okay, so you believed that he would be involved in the
24 adoption process still; until you got his consent, he would be
25 involved in the process?

1 A. What would you define as "involve"?

2 THE COURT: You're not able to -- excuse me, you're not
3 able to ask the --

4 THE WITNESS: Oh, sorry. I'm just trying to understand
5 what her meaning is of the word she wants me to answer. I
6 apologize, your Honor.

7 THE COURT: I understand. If you don't understand the
8 question, just say, "I don't understand your question."

9 THE WITNESS: Okay.

10 THE COURT: But you can only -- you can't ask her
11 questions.

12 THE WITNESS: Okay. Please will you restate the
13 question.

14 Q. BY MS. REYES: Were you going to communicate with
15 Robert Manzanares in April about him agreeing to the adoption?

16 A. Yes.

17 Q. Okay. How did you go into labor; was there a certain
18 event that you were doing that caused you to go into premature
19 labor? Was there something that you ingested, any medication
20 or anything like that that would cause you to go into premature
21 labor?

22 A. I was at my mother's office on Saturday, and being
23 away from work, I felt it necessary to check my email. I
24 happened to open up an email and see that Robby and his lawyer
25 had submitted a response to my motion to continue on Friday,

1 February 15th, and they emailed it to me.

2 Due to the nature of this document he submitted
3 among the other documents, due to the accusatory -- the lies,
4 the belittling of my character, the statements that I need
5 psychiatric mental health, and their continual harassment,
6 I became very, very upset, to put it mildly, and I started
7 crying, and I began contractions.

8 Q. What hospital did you end up delivering at?

9 A. Pioneer Valley.

10 Q. What -- what hospital did you disclose to the Utah
11 Courts that you had -- I'm sorry, to the Colorado Court that
12 you had given birth to? It wasn't Pioneer. What was the name
13 of that?

14 A. It was Pioneer.

15 Q. Okay.

16 A. That is what I said.

17 Q. Okay, so if there's a transcript evidencing something
18 other than that, that would be an incorrect recording of the
19 events?

20 A. I know what hospital I delivered at. I said Pioneer
21 Valley.

22 Q. Okay. So you were coming Utah to -- coming to Utah to
23 visit your father, your sick father is what you represented to
24 my client via email and to the Court in Colorado. So you were
25 coming here to visit for approximately ten days, and then your

1 plans were to go back to Colorado?

2 A. Yes.

3 Q. Okay. Now, you had come to Utah on previous occasions
4 and you had notified Mr. Manzanares of that. You had notified
5 him of that on an email dated November 21st of '07. If you look
6 at Exhibit No. 7, which is your response to the Colorado Court,
7 and you've attached an email dated Wednesday, November 21st of
8 '07.

9 A. Correct, to the paternity petition.

10 Q. Yes, to your response to that in Colorado. You put
11 in there, "We are leaving to visit my parents and brother
12 Jules for Thanksgiving." Did you in fact come to Utah over
13 that period of time in November?

14 A. Yes.

15 Q. And did you return to Colorado?

16 A. Yes.

17 Q. Okay, and then you sent Mr. Manzanares another email
18 dated December 18th of '07, and that's attached to Exhibit 16.
19 I believe it may be the first document over on another pile,
20 one of those.

21 A. (No verbal response).

22 Q. Okay, and then an exhibit, Exhibit No. 5 of 16 -- I'm
23 sorry, not 5. It would be Exhibit No. 2, and it's an email that
24 you sent to Robert Manzanares dated Tuesday, December 18th of
25 2007. If you'll flip through those -- they're in chronological

1 order -- it says, "I'm trying to get everything in order before
2 I leave to take Amaiya to St. George to visit her other grand-
3 parents for a week." Did you go to Utah during that period
4 of time? Sometime over the Christmas holidays did you and your
5 daughter come to Utah?

6 A. No.

7 Q. You never went to Utah?

8 A. Her father ended up bringing her.

9 Q. Okay.

10 A. That was a last minute decision.

11 Q. So your principal place of residency is in Colorado;
12 is that what you stated previously?

13 A. My permanent, is what I said before.

14 Q. Okay, and you were only in Utah over the February --
15 month of February for ten days?

16 A. (No verbal response).

17 Q. From February 14th to the 24th of February?

18 A. Correct.

19 Q. You indicated in your email dated January 11th of '08
20 to Robert Manzanares that you were coming to visit your father;
21 and then again you disclosed to the Colorado Court that you
22 were coming to travel here to visit your father. Did you have
23 a date and time you had to be back to work in February? Did
24 you have to be to work on February 25th? Were you scheduled to
25 do -- to be back there?

1 A. Nope.

2 Q. How long did you have off in February from work?

3 A. As long as I wanted to.

4 Q. Okay, and who made that decision on your behalf?

5 A. I get to.

6 Q. There's no supervisor that has to approve that at your
7 work?

8 A. There is.

9 Q. And who is that?

10 A. Jay Nielsen.

11 Q. Okay, and had you approved that leave of absence from
12 work through him?

13 A. I did.

14 Q. Okay, and what was your reasoning giving -- given to
15 him as far as your request for time off?

16 A. He knew that I was coming to visit my father who had
17 Parkinson's.

18 Q. Okay, and that's the reason you gave him, was to visit
19 your ill father?

20 A. I told him that I was also coming to visit with a
21 midwife, and have my checkups before I prepared to come to
22 Utah to have the baby.

23 Q. Okay. So you're discussing this with third parties.
24 You're discussing your -- your pregnancy plan with third
25 parties, but you're not discussing that with the father of

1 your child, Robert Manzanares; is that true?

2 A. Nope.

3 Q. Did you ever tell him that you planned to give birth
4 in Utah? Is there any --

5 A. Tell who?

6 Q. Robert Manzanares.

7 A. Yes.

8 Q. You told him you were going to come to Utah and give
9 birth to the child in Utah?

10 A. I told him I was coming to Utah in February.

11 Q. Did you tell him you were coming here to give birth to
12 his daughter?

13 A. Could you rephrase the question, please?

14 Q. Have you ever told Robert Manzanares that you were
15 coming to Utah on any given date to give birth to his daughter?

16 A. I don't recall.

17 Q. Okay. Did you ever tell him that you had retained the
18 services of a midwife or any other doctor in the state of Utah?

19 A. I don't recall.

20 Q. But you were telling other people; you were telling
21 third parties, people within your work that you were -- that
22 you had --

23 A. No.

24 Q. -- obtained a midwife?

25 A. No.

1 Q. I thought you just indicated that you told your
2 supervisor that you were coming here to discuss --

3 A. Right, that's --

4 Q. -- issues with the midwife.

5 A. -- that's one person, not people. I told one person,
6 who was my direct supervisor.

7 Q. Mr. Manzanares gave you opportunities to disclose
8 information about your pregnancy and about his daughter,
9 correct?

10 A. Correct.

11 Q. And you chose not to give him any information,
12 correct?

13 A. Incorrect.

14 Q. Did you ever tell him you were going to come to Utah
15 to give birth to your -- to your daughter?

16 MR. JENKINS: Asked and answered.

17 THE COURT: Sustained. You've asked and answered that.
18 She said, "No."

19 Q. BY MS. REYES: Did you end up having a vaginal birth of
20 your daughter, or was it a C-section?

21 A. Vaginal.

22 Q. Okay, have you ever disclosed to anybody else that the
23 birth took place as a C-section?

24 A. No. I apologize, no.

25 Q. Okay.

1 A. I apologize, your Honor. I'm laughing because I would
2 hate to ever have to have the thought of having C-section. My
3 first daughter was born vaginal as well. So --

4 Q. Okay, so after you gave birth on the -- what date did
5 you actually give birth to -- to your daughter?

6 A. February 17th.

7 Q. Okay, and when did you go before a Court for your
8 consent?

9 A. Could you rephrase the question, please?

10 Q. Did you come before a Judge in this courthouse?

11 A. I did.

12 Q. And when was that?

13 A. February 20th.

14 Q. And what took place on February 20th?

15 A. I met with the Judge, and spoke with the Judge. He
16 clarified my competency. He clarified my ability to choose
17 what was in the best interest of the child, and he -- I filled
18 out a -- I submitted a form relinquishing temporary custody
19 with adoption proceedings to the Judge.

20 Q. And your daughter's been placed in the care of your
21 brother and your sister-in-law?

22 A. Correct.

23 Q. And when did they actually take physical custody of
24 her; was it prior to the Court entering the order?

25 A. No.

1 Q. So who was your daughter with during the time of her
2 birth February 17th until February 20th?

3 A. The NICU unit.

4 Q. Okay, and why was she in the NICU unit; what was
5 happening with her?

6 A. It's customary, for her being four weeks early, to be
7 watched a little bit more to make sure that she had developed
8 fully.

9 Q. And this -- this pregnancy plan, you said that you had
10 been speaking with Mr. Jenkins from approximately -- what was
11 the date again?

12 A. End of November, beginning of December.

13 Q. Was there paperwork already established and ready to
14 go to have your brother and sister-in-law adopt your daughter?

15 A. No.

16 Q. That wasn't in place prior to you giving birth to your
17 daughter on the 17th?

18 A. Oh, I apologize. You asked if that was in place in
19 November, December. So could you rephrase the question please?

20 Q. Sometime prior to your daughter's birth of February
21 17th of 2008, are you aware if there was any documents that had
22 been prepared on behalf of your brother and sister-in-law to
23 adopt your daughter?

24 A. No.

25 Q. Okay, when did that take place, to your knowledge?

1 A. February 20th.

2 Q. And on February 20th, you were aware that Robert
3 Manzanares had filed a paternity action and a request for
4 injunction with regard to adoption in Colorado, correct?

5 A. Correct.

6 Q. You've actually filed a response to that previous to
7 February 20th?

8 A. Correct.

9 Q. You had knowledge that there was going to be a Court
10 date on February 20th?

11 A. Could you rephrase that question, please?

12 Q. You had knowledge that there was going to be a Court
13 hearing in Colorado on February 20th?

14 A. I found out about the Colora -- the Colorado hearing
15 on February 20th, because I called the Court on February 13th,
16 myself, trying to get my documents in order for my response
17 to his petition. I was never summoned, nor was I given any
18 notice that there was a February 20th hearing until I had
19 already submitted -- or was already preparing my response.
20 I found out --

21 Q. But the prior to --

22 A. -- after -- I found out after the hearing, after I
23 had already made my plans, and told them in January that I was
24 going to be leaving.

25 Q. But prior to February 20th you knew there was a Court

1 hearing scheduled in Colorado, correct?

2 A. After I already had my plans to travel, correct.

3 Q. Did you -- did you make any indication -- did you
4 indicate to the Judge that took your consent that there was a
5 pending paternity action which had been filed in the State of
6 Colorado; did you make him aware of that?

7 A. I -- no. He asked me if the father knew that I was
8 pregnant and was planning on giving birth; and I said, "Yes."
9 The paternity action in Colorado just was for Colorado to
10 declare that he was the father. That's what a paternity
11 action is.

12 Q. You didn't felt -- you didn't feel it was necessary
13 to tell the Judge at all on the 20th that there was a paternity
14 action pending relating to this child that you just gave birth
15 to?

16 A. You know, I don't recall if I said those exact words,
17 "paternity action;" but a paternity action is someone --

18 Q. Okay, if you can --

19 A. -- stating that he's the father.

20 Q. -- I need you to answer my question, though.

21 THE COURT: Just answer her question.

22 THE WITNESS: I don't recall those exact words came up.
23 I know he asked me if -- he did ask me, does the father know
24 that I was pregnant. I said, "Yes." He said, "Does the father
25 know you're in Utah?" I said, "Yes."

1 Q. BY MS. REYES: But you never --

2 A. And then he asked me, "Has the father filed anything
3 in Utah with the paternity action?" and I said, "No."

4 Q. And you didn't offer any information about the fact
5 that he had filed in Colorado?

6 A. It didn't matter.

7 Q. Okay. Throughout this process Mr. Manzanares has sent
8 you several different checks, and we've gone through those. Do
9 you deny that he issued those checks to you and that you cashed
10 them?

11 A. There are some checks that he said he sent me that I
12 never received.

13 Q. What checks are those?

14 A. I don't know. They're in your documents, in your
15 file.

16 Q. Okay, if I can have you look at Exhibit No. 3, then.
17 That would be the checks that -- and then also attached is
18 Exhibit 5 to No. 16, Exhibit 16 as well.

19 A. I know that there's one document that has them that
20 says on there -- January 7th I never received, and one in
21 November, I believe is the date.

22 Q. If you'll look at Exhibit No. 3. Are you looking at
23 Exhibit 3, or are you looking at Exhibit 16?

24 A. Oh, I'm in Exhibit 5.

25 Q. Okay.

1 A. I was looking at Exhibit 5.

2 Q. Okay, Exhibit 5 and 16, and then also look at Exhibit

3 3. If you'll -- I'm sorry, I think you're on 16 again. Go to
4 the other one right there in front of you.

5 A. No. 3?

6 Q. Yeah, 3. You said you did not receive the one on
7 January 7th?

8 A. Well, in here it says, "Not cashed." I would have to
9 look at my records. I added up the amount of money that he
10 gave me -- that I received; and it was \$1,500.

11 Q. Okay, you never -- you never denied the money coming
12 in, though, right? You took it and cashed it?

13 A. I received \$1,500 that he sent me for what he says was
14 for the baby. I received \$300 for a phone that he begged me to
15 buy him in April, a Blackberry, that he never paid me for. It
16 was \$397, and I have that bank statement, and --

17 Q. Okay, let me ask you this, then. With regard to his
18 emails that he sent you, isn't it true that he would ask if you
19 needed more assistance than what he was giving, and you failed
20 to respond and say, "Yes, I need more"?

21 A. I would email him -- I emailed. I responded. I gave
22 him information about my welfare, about the baby's welfare.
23 That I was happy, that I was healthy, that I was fine. So I
24 did respond to him.

25 THE COURT: That wasn't the question -- or the answer.

1 The question, please?

2 THE WITNESS: Could you restate the question?

3 Q. BY MS. REYES: Isn't it true -- okay. Isn't it true
4 that Robert Manzanares sent you emails asking if you needed
5 additional money or funds; and that you didn't respond with any
6 requests for additional monies or funds?

7 A. Could I have a minute to look and see if --

8 Q. That's fine.

9 A. -- if in his email he said those specific things?

10 Q. I can -- I'll try and point those out to you. In
11 Exhibit No. 3 -- I'm sorry, Exhibit No. 2 --

12 A. Uh-huh.

13 Q. -- which are his emails, the very first email, dated
14 October 25th of '07, it says, "I would like to help you out
15 financially as much as possible. If you need money for
16 anything, please let me know, because I want only the best
17 for the baby to remain healthy and happy. As I have said
18 and asked you time and time again, can I help out with your
19 benefits?" Did you respond to that email?

20 A. I did.

21 Q. And how did you respond?

22 A. Well, they don't have it in here, but I have it in
23 my emails that I brought. A lot of emails were left out. I
24 responded --

25 Q. Did you ask him for more --

1 A. -- I'm sure I responded that I was doing well and
2 healthy and fine.

3 Q. Okay, so you don't recall asking him for additional
4 monies or telling him that you'd like help with the benefits or
5 anything of that nature?

6 A. No.

7 Q. Although he did offer?

8 A. Sure.

9 Q. Okay. Isn't it true that your last communication
10 with Robert Manzanares was that email that you sent him on
11 January 11th of 2008? That was your last communication with
12 him?

13 A. By email, yes.

14 Q. Okay. So you've -- you've been in Utah now for four
15 days? Is that right; is that what you said, you've been in
16 Utah for four days?

17 A. Oh, I apologize, three days.

18 Q. Three days, okay. Have you had contact with your
19 daughter?

20 A. I apologize -- oh, Amaiya?

21 Q. No, not with -- with your --

22 A. The baby?

23 Q. -- the newborn infant, right, that you've placed with
24 your brother and sister-in-law?

25 A. Yes.

1 Q. Okay, and would it be a fair statement to say that if
2 this adoption process went through you would have the continued
3 ability to have contact with her?

4 A. Sure.

5 Q. Okay. Yet Robert Manzanares, who is the father of
6 this child, would not, correct?

7 A. I wouldn't say it like that, but --

8 Q. With you being here for three days, do you determine
9 -- are you -- what's your position with regard to your stay
10 here; are you here visiting, or are you a temporary resident
11 of Utah now?

12 A. I grew up in Utah.

13 Q. Okay, if you --

14 A. I lived here the majority of my life, and so every
15 time --

16 Q. But currently --

17 A. -- every time I come back, my family is here. Right
18 now I am -- I would say every time I come back I view it as a
19 temporary residence. I view myself as co-residents of Utah and
20 Colorado. Colorado is where I work. Utah is where I grew up,
21 where my family is, where I come back, where home is.

22 Q. You maintain your principal place of dwelling in
23 Colorado, correct, for you and your daughter?

24 A. My permanent residence for work, yes.

25 Q. And does your daughter, your older daughter is Amaiya;

1 is that her name?

2

3 A. Uh-huh.

4 Q. And how old is she?

5 A. Seven.

6 Q. Does she attend school in Colorado?

7 A. She does.

8 MR. REYES: Okay. Your Honor, if I may have just a
9 moment to ask my client a question?

10 THE COURT: (No verbal response).

11 (Counsel conferring with respondent off the record)

12 Q. BY MS. REYES: Ms. Terry, do you have a Colorado
13 driver's license?

14 A. I apologize. I do.

15 Q. And how long have you resided in Colorado?

16 A. Do you mean from the first time I moved there, or
17 continuously?

18 Q. Have you -- have you moved outside of Colorado? Well,
19 when did you move to Colorado initially?

20 A. In '99.

21 Q. Okay, and then where did you go from there?

22 A. We lived all over Colorado, came back here, back to
23 Colorado.

24 Q. When you say "we," who are you referring to?

25 A. Oh, I apologize, my ex-husband and I, Curtis.

1 Q. Okay, and so how long were you in Colorado? You were
2 there in '99, you say?

3 A. Uh-huh.

4 Q. And then for how long until you moved to Utah?

5 A. Well, I mean, they were a year or two. We'd come
6 back. His parents go back. Moved to Pueblo, all over.

7 Q. When is the last time you moved back to Colorado?

8 A. In 2001.

9 Q. Okay, so you've been in Colorado since 2001?

10 A. Where we've worked, yes.

11 Q. Okay, now your father -- you indicate that you were
12 here to -- to visit your ill father. Where does he reside?

13 A. Taylorsville or Centerville.

14 Q. Okay, does he reside in St. George?

15 A. No.

16 Q. Is that a different -- that's a different individual
17 you've referred to in your emails previous?

18 A. Right, I said "her other grandparents," correct.

19 Q. Okay, so the father that's had health problems lives
20 in Taylorsville area?

21 A. Salt Lake. Suburb of Salt Lake.

22 Q. Okay, and you had discussed with your brother and
23 sister-in-law previous to you giving birth, of the anticipation

24 that they would adopt your daughter? You had that in mind?

25 That was what your intent was going to be long-term; that they

1 would be the adoptive family?

2 A. Could you restate that one more time, please?

3 Q. Did you intend to have your brother and sister-in-law
4 as the adoptive family for your daughter?

5 A. Yes.

6 Q. And when had you made that decision?

7 A. I would say probably a month -- a month or two after
8 Robby said he didn't want anything to do with the adoption.

9 Q. Can you give me a date?

10 A. The end of November.

11 Q. So you had this plan and this -- this knowledge,
12 and Robert Manzanares is asking you about your health and the
13 baby's health, and you don't disclose to him what your plans
14 are with regard to the child; instead, you're -- you're vague
15 about it?

16 A. Oh, no, I -- he knew fully well that I was going to
17 place this child for adoption.

18 Q. Did he know that you were going to place the child for
19 adoption with your brother and sister-in-law in Utah?

20 A. He didn't want any part of it. That is what he told
21 me.

22 Q. What he -- he told you he would not consent to the
23 adoption, correct?

24 A. Right.

25 Q. Okay, and so based on the fact that he told you he

1 wouldn't consent to the adoption and he wanted to raise your
2 daughter, even if he had to do it on his own, you chose not to
3 give him any information about your unilateral plans for this
4 child?

5 A. I told him the few times that we could talk without
6 him yelling and starting arguments, I told him that we needed
7 to seriously think about the best interests of the child, what
8 was going to be the best interests of the child. That the
9 child needed a two-parent home to grow up in, a family with --
10 with love that wanted nothing more than to have a child versus
11 a hostile, stressful, anger situation.

12 Robby told me he didn't want anything to do with the
13 adoption, and I told him that if we worked together, and picked
14 the parents together, that he could have -- that it could be an
15 open adoption and he could have a relationship with the child,
16 and he refused.

17 Q. Didn't he tell you that he wanted to raise his own
18 daughter, that he wanted to be a part of this child's life,
19 and that he was willing to do anything and everything to -- to
20 raise this child?

21 A. He did say that after he said that that's what was
22 best for him, and how he felt, not anything to do with what
23 was in the best interests of the child. He was concerned for
24 himself and how he would feel in 15, 20 years, and not about
25 what was in the best interest of the child, that the child

1 needed a stable family, loving, two-parent home environment.

2 Q. Wouldn't you agree that people's opinions as to what's
3 best for a child can differ?

4 A. Would you say professionals?

5 Q. I just -- I'm just saying, wouldn't you agree that
6 people can have different opinions on different issues?

7 A. No.

8 Q. Okay, so everyone should think just as you think?

9 THE COURT: Counsel, that's argumentative.

10 MS. REYES: Okay, I apologize. I don't think I have
11 any further questions, your Honor.

12 THE COURT: I have some that I can (inaudible) through
13 you or through Counsel and it's your -- if they're not covered.

14 MR. JENKINS: Okay, and your Honor, I had anticipated
15 calling Ms. Terry, myself, as one of our witnesses. I assume
16 it's okay for me to --

17 THE COURT: Please.

18 MR. JENKINS: -- to combine cross with direct?

19 CROSS EXAMINATION

20 BY MR. JENKINS:

21 Q. Ms. Terry, I apologize if I duplicate anything that
22 you've already answered. I try not to, but let me --

23 A. It's okay.

24 Q. -- let me ask a few questions. Have you ever testified
25 in Court before?

1 A. No.

2 Q. So this is your first time, as far as you know?

3 A. As far as I know.

4 Q. I just wanted to -- do you feel under a lot of stress
5 and pressure?

6 A. Yes.

7 Q. Okay.

8 A. And maybe -- this is so silly. I wear glasses for far
9 away. So I feel very close to the microphone. So I just feel
10 a little out of sorts.

11 Q. Okay, now where were you born?

12 A. Salt Lake City, Utah.

13 Q. And where were you raised?

14 A. A combination of Logan, Utah and St. George, Utah.

15 Q. Okay, and how old are you?

16 A. Thirty-one.

17 Q. What kind of schooling have you had?

18 A. I went to a junior college in St. George; elementary,
19 high school in Utah; and I attended a State college to finish
20 my Bachelor's in Denver, Colorado, and received my teaching
21 license; and I'm currently finishing up my thesis for my
22 Master's Degree.

23 Q. Okay, and where is -- where do you do your Master's
24 at?

25 A. I'm currently at UCV.

1 Q. Okay. Where are you employed?

2 A. For Wellbridge Colorado Athletic Club in Denver.

3 Q. Okay. How long have you been there?

4 A. Nine years.

5 Q. Okay, what's your --

6 A. Nine to ten years.

7 Q. What's your current position?

8 A. I have multiple positions. I'm the Assistant General
9 Manager, and I'm also the Aquatics Director.

10 Q. Okay. In some of your responses to questions that
11 Counsel has asked, you've indicated you've been married before?

12 A. Correct.

13 Q. And who was that to?

14 A. Curtis Michael Terry.

15 Q. And where were you married?

16 A. In St. George.

17 Q. In St. George. How long were you married to Mr. Terry?

18 A. Seven years.

19 Q. Okay, and you've also referenced another child, a
20 Amaiya. Is Amaiya's father Mr. Terry?

21 A. Correct.

22 Q. Okay, and how do you spell Amaiya?

23 A. It's A-m-a-i-y-a.

24 Q. Okay. How long have you been divorced or separated
25 from Mr. Terry?

1 A. Three years.

2 Q. And do you have some kind of custody arrangement for
3 Amaiya?

4 A. We do.

5 Q. And what is that?

6 A. Curtis and I get along really, really well. We had --

7 Q. Was it --

8 A. -- joint full custody.

9 Q. So like joint legal custody, maybe, or something?

10 A. Right.

11 Q. Do you share physical custody, or how does that work;
12 like back and forth? Is Amaiya back and forth or --

13 A. Right.

14 Q. And how does that work? Just briefly. Don't -- you
15 know, don't go into great detail.

16 A. Well, we only live a mile or two from each other,
17 and since we get along really well, both of us -- all of our
18 decisions are based on what's in the best interests for Amaiya.
19 There's no selfishness that comes into play; and so Curt and I
20 work really well, and Amaiya just thrives, benefits from a non-
21 selfish parental environment.

22 Q. Uh-huh. Now, if Curt's an ex-husband, why do you get
23 along with him so well?

24 A. Basically because we -- we said that it's not about
25 us, it's not about how we feel and it's not about what we want

1 either now or in the future. It's about Amaiya, about how she
2 feels, about what she needs; and she, just like every other
3 child, needs two parents that are loving, that put the child
4 before the parent, before themselves, and we collaborate on
5 everything. We don't disagree on the way to discipline. We
6 don't disagree on the way to talk to her. We don't disa -- we
7 don't defile each other's character. We don't attack each
8 other's character. We don't attack each other.

9 Q. Okay, let me ask you, when did you meet Robert -- Mr.
10 Manzanares, I guess I should say?

11 A. Meet or --

12 Q. Uh-huh.

13 A. -- date?

14 Q. Where did you meet him?

15 A. He worked for the company about half the time I had,
16 and I just knew of him because he worked in a different club.
17 So if there was a regional meeting once or twice a year, then
18 I --

19 Q. When you say --

20 A. -- I knew of him.

21 Q. When you say "the company," we're talking about?

22 A. Wellbridge Colorado Athletic Club, I apologize, yes.

23 Q. Okay, I just -- just want to make sure.

24 A. Yeah.

25 Q. And when -- when did you start dating?

1 A. Well, we went on a Dutch date -- I don't know if you'd
2 consider it dating -- the last week of September; and through
3 the course of October 2006, went on dates here and there. By
4 the end of October, first week of November, I would say that
5 was when we decided we were exclusively dating.

6 Q. Okay, and was he still working with Wellbridge then?

7 A. Yes.

8 Q. Okay, and it sounds like at some point you decided to
9 move in together?

10 A. Uh-huh.

11 Q. And when was that?

12 A. March 2007.

13 Q. Okay, early March, late March?

14 A. Early March.

15 Q. Okay, and was he still working for Wellbridge by then?

16 A. No, he had quit.

17 Q. Okay, and did he ever tell you why he left or --

18 A. Yes.

19 Q. What did he tell you?

20 A. He -- he didn't get along with his immediate boss,
21 which was a national personal training supervisor; and for
22 quite some time, for a few months, he didn't get along with
23 him, disagreed with him, didn't like him, whatever reason, and
24 he got in an argument. Basically one sided; Robby didn't agree
25 with what his decision -- the supervisor's decision was. So he

1 went in and yelled and threw a temper tantrum and quit; and the
2 GM of his club, general manager of the club that he worked for
3 tried to go in and salvage his job, and they just said, "Nope,
4 it's done."

5 Q. Now, you say that was the story as it came from --

6 A. From Robby. That is what he told me.

7 Q. And when you say "Robby," you're talking about
8 Mr. Manzanares?

9 A. Robert, correct.

10 Q. Okay. When you moved in together, was he working for
11 anyone else there and somebody new yet?

12 A. No.

13 Q. Okay. How was the decision reached to move in to --
14 together?

15 A. Well, he quit his job, and he was fine until the end
16 of January. He got really stressed out about money, and he
17 came up with the idea that if we moved in together, lived
18 together, then we could share expenses. His reasoning was
19 then that way he wouldn't have to pay full rent, and that
20 would save me money, because he was really worried about
21 finances. His parents were giving him money, but he -- he
22 just wasn't -- he couldn't make his bills. So he thought it
23 would be a great idea if we lived together. Then that way we
24 could share bills.

25 Q. Okay, and you went along with the idea?

1 A. Yeah, I --

2 Q. Okay.

3 A. -- I thought that it would be -- that it would be
4 helpful. In a relationship you try and help each other out.

5 Q. Okay, did you -- were you living somewhere else at the
6 time, I assume?

7 A. I was. I was living in a really nice apartment.

8 Q. And --

9 A. A two bedroom apartment.

10 Q. Okay.

11 A. And --

12 Q. So was there discussion about where you would live,
13 his place or your place, or --

14 A. I really wanted him to move into my place, because
15 Amaiya had her own room, and she was stable. Again, I was
16 trying to think of the child in this situation, instead of
17 myself; and Robby said, "No." He -- he wanted us to move
18 into his place, because he needed a garage for his things.
19 We discussed it multiple times, and he refused to budge. He
20 just said Amaiya could just sleep in the living room versus
21 having her own bedroom.

22 Q. Did you -- did you have a lease with your other place?

23 A. I did. I had to break that lease, and it cost me
24 \$2,000. That was another part of it. I didn't want to pay
25 that money; and he said that he would help me pay that. I

1 asked him, "How? You don't have a job." He said, "Well, I'll
2 just have my parents pay for half of it."

3 MS. REYES: Your Honor, I'm going to object to
4 relevancy here.

5 THE COURT: I'm going to sustain. We're not -- we're
6 far afield from the consent issues.

7 MR. JENKINS: Well, your Honor, I think that you'll see
8 as I go along here that I think -- I think a lot of this --

9 THE COURT: Just go to the consent issues.

10 MR. JENKINS: -- I think a lot of it has relevance as
11 to, you know, why she made her decision and things.

12 THE COURT: Let's go to the consent issues.

13 MR. JENKINS: Is it -- does the Court believe it's
14 relevant why she reached the decision she did to place the baby
15 for adoption?

16 THE COURT: I don't know it's legally that matters,
17 does it?

18 MR. JENKINS: Well --

19 THE COURT: I mean, under the law? I mean, from either
20 Counsel.

21 MR. JENKINS: Uh-huh, I -- and I'm okay to save that
22 for the custody portion of things, because I think it's
23 definitely relevant there --

24 THE COURT: Yes, I agree.

25 MR. JENKINS: -- but I felt it was relevant -- you

1 know, there were some -- some very strong feelings held about
2 that, and --

3 THE COURT: I mean, her decision to put it up for
4 adoption or not put it up is --

5 MR. JENKINS: Uh-huh.

6 THE COURT: -- her choice. I don't know if the --

7 MR. JENKINS: I understand.

8 THE COURT: -- it goes beyond that, does it?

9 MR. JENKINS: I don't know that it does in a context
10 like this.

11 Q. BY MR. JENKINS: Now, you were never married to
12 Mr. Manzanares?

13 A. Nope.

14 Q. Okay. Still not married to him?

15 A. Nope.

16 Q. Okay, and you weren't married when you became
17 pregnant?

18 A. Nope.

19 Q. And you weren't married when you left?

20 A. Nope.

21 Q. Okay. How early on in the pregnant -- well, when did
22 you find out you were pregnant?

23 A. Between the second and third week of July.

24 Q. Okay, and how early on did you discuss adoption with
25 Mr. Manzanares?

1 A. Immediately.

2 Q. In July or August or --

3 A. In July.

4 Q. Okay, and let me ask you, what kind of -- what did
5 Mr. Manzanares know about your connections in Utah, that you're
6 aware of? Had he met your family?

7 A. Yes.

8 Q. Did he meet your family before you broke up, or how --
9 how was that?

10 A. It was right before. We had a -- a wedding that we
11 attended together the end of July.

12 Q. Okay, and --

13 A. So right after we found out I was pregnant.

14 Q. Okay, and when you were together, did you talk about
15 Utah; did you talk about growing up, those kind of things?

16 A. Oh, yeah. He knew I grew up in Utah. He knew my
17 father had Parkinson's. He knew my family was here. He knew
18 Curtis' family was here. He knew we visited all the time.
19 They came out to visit me. Yes.

20 Q. Okay. At the time you broke up and moved out -- don't
21 know that those were necessarily the same -- did you -- was it
22 your understanding that Mr. Manzanares owed you some money?

23 A. Yes.

24 Q. And do you know how much?

25 MS. REYES: Your Honor, again I'm going to object just

1 to relevancy here.

2 MR. JENKINS: Well, your Honor, you know, we've got --
3 we made a big deal about payments.

4 THE COURT: Well, if you want her to put on testimony
5 that any of the payments that she received relates to some
6 other debt, or obligation other than the child support that
7 he's claiming --

8 MR. JENKINS: Okay.

9 THE COURT: -- then I think it's relevant. Other than
10 that, I don't care whatever debts they had between them. It
11 has nothing to do with what we need to decide.

12 Q. BY MR. JENKINS: Ms. Terry, in the documents that have
13 been admitted already, there's reference to a \$300 payment that
14 Mr. Manzanares made to you in October of -- of 2007, I guess.
15 What was your understanding about that payment?

16 A. That was a partial payment for a blackberry phone that
17 I bought for him the last week of March, first week of April
18 -- it's on my bank statement -- that he continually said he
19 would pay me for and never did; and it took six months to get
20 a partial payment for.

21 Q. Okay, were there any other -- any of the other amounts
22 that Mr. Manzanares gave you that have been discussed here
23 today that were -- that you did not believe were specifically
24 for the baby?

25 A. He sent me a \$200 check in December that said

1 specifically it was for my Christmas present for me -- a
2 Christmas present for me.

3 Q. When you found out you were pregnant, did that affect
4 your insurance payments at work?

5 A. Yes.

6 Q. How did that affect that?

7 A. Greatly. My insurance jumped to almost \$500 a month.

8 Q. From what?

9 A. From 120, 110; but when I -- when I contacted my
10 insurance in July, I had to back pay. So I had to back pay
11 up until when I thought I had conceived in order for the
12 insurance to carry that. So in July I was stuck with a \$1,600
13 back payment for health insurance.

14 Q. Okay. Was -- was Mr. Manzanares aware of that?

15 A. Yes, I told him.

16 Q. And did you tell him what it was for?

17 A. Yes, he knew that my insurance jumped up greatly.

18 Q. Did he offer to help with any of that?

19 A. No.

20 Q. Okay.

21 A. He didn't offer to pay anything, nor did I hear of any
22 type of offering until October.

23 THE COURT: You can only answer --

24 MR. JENKINS: No question pending.

25 THE COURT: -- questions when he asks you.

1 THE WITNESS: Oh, sorry. Just was elaborating. Okay.

2 THE COURT: You can't volunteer information.

3 MR. JENKINS: Okay, if I may approach the clerk with
4 Exhibit -- is this 26?

5 COURT CLERK: Yes.

6 THE COURT: Thank you.

7 Q. BY MR. JENKINS: Ms. Terry, I've handed you a document
8 that's been marked as Exhibit 26. Do you recognize this?

9 A. Yep.

10 Q. Can you tell me what it is?

11 A. These are flight tickets for Amaiya and I to come to
12 Salt Lake on February 19th.

13 Q. Okay, and when did you purchase these?

14 A. December 21st.

15 Q. And is that the date reflected at the top of the
16 document?

17 A. Yes.

18 Q. Now, what is this specifically; is this a confirmation
19 of your purchase, or what is it that you --

20 A. This is an E ticket.

21 Q. Okay.

22 A. So an actual E ticket to use.

23 Q. Okay, so let me ask you, in -- on December 21st of
24 2007, did -- had you planned to come between these dates,
25 February 19th and February 27th to Utah?

1 A. Yes.

2 Q. And what was the purpose of that visit?

3 A. The purpose was to visit my father, visit my family,
4 visit with the midwife, see a couple doctors, establish a birth
5 plan solid here with the hospital.

6 Q. And was your purpose to come and give birth during
7 that time?

8 A. Like I said before, I don't think you can ever plan to
9 give birth.

10 Q. Well, let me ask you, did you ask any of the doctors
11 or midwives, anything, if you could be induced during that
12 visit?

13 A. I did. I asked a bunch of the doctors and midwife if
14 I could be induced early, and they said no. They said they --
15 Utah law, they do not induce before two weeks --

16 Q. What do you mean "two weeks"?

17 A. -- prior to due date.

18 Q. Okay, so about what, 38 weeks or --

19 A. Right, 38, 38-and-a-half weeks. They don't induce
20 before.

21 Q. And did you ask more than one doctor or midwife that
22 question?

23 A. I asked one midwife, and I asked three doctors, and I
24 believe my brother also asked a couple doctors.

25 Q. Okay, and you got -- but you understood before you

1 were set to come to Utah that -- that they wouldn't induce you;
2 is that right?

3 A. Right, they would not induce me unless I was 38 to
4 38-and-a-half weeks.

5 Q. And when did 38 to 38-and-a-half weeks fall for your
6 pregnancy?

7 A. I was due March 17th. So subtract 2 weeks.

8 Q. Okay, about 2 weeks --

9 A. Right.

10 Q. -- before March 17th?

11 A. Right.

12 Q. Okay. So let me ask you, when you sent the email
13 that's attached, that they've introduced as Exhibit 8, when
14 you sent that email, you had already purchased these tickets?

15 A. Oh, yes, long before.

16 Q. So you purchased those December 21st. This email dated
17 January 11th, correct?

18 A. (No verbal response).

19 Q. So let me ask you, in the -- in the email that's
20 Exhibit 8, where you tell Mr. Manzanares, "I will be flying
21 to Utah to visit my father in February for a week, maybe a
22 little longer," that was true, wasn't it?

23 A. Correct.

24 Q. You were -- and you were planning to go, and you had
25 purchased tickets?

1 A. Correct.

2 MR. JENKINS: Okay, I'd move the admission of Exhibit
3 26, your Honor.

4 MS. REYES: No objection.

5 THE COURT: So admitted.

6 (Exhibit No. 26 received into evidence)

7 Q. BY MR. JENKINS: Now, you've heard a lot of discussion
8 about -- about Mr. Manzanares' petition for paternity in
9 Colorado. That's Exhibit 16, if you can find it.

10 A. Okay.

11 Q. Do you recall receiving that?

12 A. I do.

13 Q. Okay. Were there other documents that were delivered
14 with this?

15 A. There were -- they were kind of together, but it
16 was a paternity petition, a case information sheet, which
17 just stated my information and his information, like our
18 address and phone number, and then admission to paternity
19 saying that he was admitting he was the father. Those were
20 the only three documents that I received, and it was a Friday
21 evening at 8 p.m.-ish.

22 Q. Okay, let me ask you, if you'd look at Exhibit 20
23 there. It's somewhere --

24 A. In Exhibit 16?

25 Q. No, no, I'm sorry.

1 A. Or no, Exhibit 20?

2 Q. It's a separate Exhibit 20.

3 THE COURT: You can help her if you need to find it.

4 MR. JENKINS: Okay.

5 THE WITNESS: Oh, I --

6 Q. BY MR. JENKINS: Did you find it?

7 A. -- I found it, 19 and 20. Here we go.

8 Q. Now, I just wanted to clarify. You said that the
9 admission of paternity talked about him admitting paternity;
10 but I want to ask you if this was a document that you received
11 that day?

12 A. No, I did not receive this document. I've never seen
13 this document before. No. 20?

14 Q. Are you sure? Because it's titled "Admission of
15 Paternity."

16 A. Oh, yeah, I did do this.

17 Q. Okay, you --

18 A. Yeah, I've seen this.

19 Q. Okay, and do you remember where you saw it?

20 A. (Inaudible).

21 Q. I could ask, was this delivered with the petition?

22 A. Yes.

23 MS. REYES: Your Honor, I'm going to object as to
24 leading.

25 THE COURT: Sustained.

1 MR. JENKINS: Okay.

2 THE COURT: She said she didn't know it, Counsel, and
3 then you --

4 MR. JENKINS: Okay.

5 THE WITNESS: I received three -- I received three
6 documents that night; admission of paternity, case information
7 sheet, and paternity petition. So these are the three --

8 Q. BY MR. JENKINS: Did you read that --

9 A. -- documents.

10 Q. -- this document that night, or did it -- I apologize.

11 A. I didn't. That's why -- that's why I apologize that I
12 -- it looks like I hadn't seen it, I didn't read it. Basically
13 the only document that I even read or cared about reading was
14 the paternity petition.

15 Q. Okay.

16 A. Both those other documents, I didn't really take a
17 look at.

18 Q. Let me ask you, when you were served with the petition
19 for paternity, did you also receive a summons?

20 A. No.

21 Q. Did you receive any kind of notice of any hearings?

22 A. I did not.

23 Q. Okay, but subsequently, as I understand from your
24 testimony when Ms. Reyes was questioning you, that there was
25 a time when you learned that a hearing was pending; is that

1 right?

2 A. Yes, yes.

3 Q. And when was that?

4 A. In an email that Emily Berkley sent me just before
5 the 13th -- I'm not sure, I don't remember -- I don't recall
6 the date -- she said that if I do not sign some form -- she
7 was trying to get me to sign a form. She said if I didn't sign
8 it -- she was threatening me with a hearing. She said, "If you
9 don't sign this, then we're going to have to go to a hearing."

10 It was at that time after I read that email that I
11 decided I needed to get going on my response to the petition;
12 and I called the Court for certain documents to help with that
13 response, and the clerk said, "Do you know that you have a
14 hearing scheduled for February 20th?" I said, "No, I did not
15 know that I had a hearing for February 20th." She said, "Well,
16 you do."

17 Then I said, "Okay, well, I already had travel plans
18 that I notified the petitioner and his lawyer about a month
19 ago. They never consulted me about when was a good time to
20 have a hearing. What should I do?" I asked the clerk what I
21 should do. She said --

22 MS. REYES: I'm going to --

23 THE WITNESS: -- the best thing to do is if you're --

24 MS. REYES: -- object as to hearsay. The clerk's not
25 here to --

1 THE COURT: Sustained.

2 MR. JENKINS: That's fine. Let me approach the clerk
3 with Exhibit 26 --

4 COURT CLERK: No. 27?

5 MR. JENKINS: Oh, 27, I'm sorry. I don't have a pen.

6 Q. BY MR. JENKINS: Ms. Terry, I've handed you an exhibit
7 that's been marked as Exhibit 27. Do you recognize that?

8 A. Yes, this is the email.

9 Q. Okay, and you were talking about some portion of the
10 email or reference to a hearing. Can you point that out?

11 A. She said that she attached the admission of paternity.
12 We requested, "If you agree that Rob is the baby's biological
13 father, you sign this document in front of a notary and return
14 the original to our offices by February 13th. If you do so, it
15 may alleviate the need to go to hearing on February 20th."

16 Q. Okay. There's no time in there?

17 A. No time.

18 Q. For a hearing?

19 A. No. Yeah, I was not summoned; I didn't sign anything.
20 I didn't know of a date, a place, time.

21 Q. And let me ask you, Ms. Terry, did you receive this
22 letter dated February 7th from Ms. Berkley?

23 A. Yes.

24 MR. JENKINS: Okay, move the admission of Exhibit 27.

25 MS. REYES: No objection.

1 THE COURT: So admitted.

2 (Exhibit No. 27 received into evidence)

3 MR. JENKINS: May I approach the clerk with Exhibit 28?

4 THE COURT: (No verbal response).

5 Q. BY MR. JENKINS: Ms. Terry, you've been handed Exhibit

6 No. 28. Do you recognize this document?

7 A. Yes, I do.

8 Q. Is this your response to Ms. Berkley?

9 A. Yes.

10 Q. And did you do anything else in response to the letter

11 you received on February 7th?

12 A. No, I did not.

13 Q. Let me ask you just briefly, you filed something in

14 Court, right?

15 A. Yes.

16 Q. Okay, you filed -- and we've talked about that

17 already. You filed a -- it's already been admitted -- a

18 response to -- excuse me, a motion for continuance?

19 A. Right, I filed it with the reply to the paternity

20 action. Now, if I might clarify with the Court -- sorry,

21 maybe I shouldn't because you're not asking a question. Sorry.

22 Q. Let me ask you, at the time you filed a motion for

23 continuance, you really did have plane tickets to come to Utah;

24 is that right?

25 A. Yes, I booked the plane tickets clear back in

1 December.

2 Q. Okay, but you testified earlier that you drove.

3 A. Correct.

4 Q. Can you explain that?

5 A. I wasn't feeling very well. I had a few days where --

6 I don't know how else to put it, but I just wasn't feeling

7 well.

8 Q. Uh-huh.

9 A. Being pregnant before, I knew I was like I just am not
10 feeling well, and I don't think flying would be that smart. So
11 that's why we drove.

12 Q. And when you say "we drove" --

13 A. I apologize, Amaiya and I, my seven year old.

14 Q. Okay, so both of you came and you drove straight
15 through?

16 A. Yes.

17 Q. Is that good for pregnancy, too?

18 A. Probably not in a blizzard, but --

19 Q. And instead of leaving on the 19th, which you -- when
20 you purchased the tickets for, if I recall, when was it you
21 said you left?

22 A. February 14th.

23 Q. Is there a reason you chose that day?

24 A. It was a Thursday. It's easier to get off work for me
25 on a Friday. Thursday and Friday are my light days. Monday,

1 Tuesday and Wednesdays I work long days. So it's just easier
2 for me.

3 Q. Okay, and when you left Colorado on February 14th, did
4 you intend to give birth in Utah that -- well, at that time you
5 were here?

6 A. No.

7 Q. Okay, now if I recall earlier, you said that over the
8 weekend you pulled up your work email or --

9 A. Correct.

10 Q. -- something like that.

11 A. So I drove out on Thursday, the 14th; and Saturday, I
12 don't remember, maybe 1 p.m., 2 p.m., I was at work with my
13 mom. Like I said, she has, you know, Internet access, and I
14 just said I'm going to check my email, you know, my work email,
15 and I did. That was where the email from Emily Berkley was.

16 Q. And when you say "the email from Emily Berkley," what
17 did that contain?

18 A. The email contained an attachment, which was what she
19 had filed with the Court on Friday the 15th, which was a -- I
20 believe it was a reply to my response petition, or it was a
21 denial of my continuance, both.

22 Q. If you could look at Exhibit 22 -- if you need some
23 help I can come and --

24 A. Okay, right here. Right, response to -- right.

25 Q. Was that what you -- what was in the email attached

1 over the weekend?

2 A. Yes.

3 Q. Okay. You previously described emotions and feelings
4 you had when you read this. Prior to opening that email did
5 you have any intent to have your baby that weekend?

6 A. No, actually I was very happy to come home and have
7 the support of my family. I felt very calm. I felt very
8 relaxed. It just was nice to be home with family, and to
9 not have any stresses, to not have people harassing me. Yeah,
10 I actually was very, very relaxed, very happy until I opened
11 this email.

12 Q. Okay, and do you recall what day it was you opened it?

13 A. Saturday.

14 Q. So whatever --

15 A. The 16th.

16 Q. The 16th, and what day was your baby born?

17 A. My baby was born Sunday the 17th at 2:54 in the morning.
18 So basically that night, Saturday night.

19 Q. Okay. Ask just a few questions about Mr. Manzanares'
20 paternity petition, Exhibit 16. If you could turn to paragraph
21 8.

22 A. Uh-huh.

23 Q. He has -- well, a handful of paragraphs that talk
24 about the Mormon faith. Paragraph 8 suggests that at the
25 time you ended your relationship with Mr. Manzanares, she did

1 so because he would not convert to the Mormon faith. Is that
2 statement true?

3 A. Not at all.

4 Q. Was that issue even involved at all in separating from
5 Mr. Manzanares?

6 A. For me, no. That was not an issue at all.

7 Q. Okay, is paragraph 9 accurate?

8 A. No.

9 Q. How about paragraph 10?

10 A. No.

11 Q. Is that something that you would have said to him?

12 A. Not at all. I'm a parent. I don't view children as
13 sacrifices.

14 Q. How about paragraph 11?

15 A. No.

16 Q. When you say "No," does that mean you didn't say that?

17 A. No, I never referred to the child as a business.

18 Q. Okay. You have a six, seven year old?

19 A. Correct, she's seven.

20 Q. When you were initially thinking of adoption, you were
21 thinking of placing with a Mormon family?

22 A. Initially. I apologize --

23 Q. And did you have any --

24 A. -- is that what you said initially?

25 Q. Did you mention that to Mr. Manzanares, that you would

1 like to place with a Mormon family?

2 A. No.

3 Q. You didn't at all?

4 A. No, not at all.

5 Q. Now, Ms. Reyes asked you why you never responded to
6 Mr. Manzanares when he offered more money. Was there a reason
7 you didn't want to respond to him on those?

8 A. To be honest with you, I knew that he was getting the
9 money from his parents, because of all of the money that I had
10 spent while I was dating him, him not having a job, not being
11 that great with money, I just didn't even want to go there.

12 Q. If you hadn't driven up to Utah on February 14th, would
13 you have used your tickets and flown out?

14 A. Yes.

15 Q. So it wasn't like I'm not going to fly regardless;
16 it's just that -- was there -- did you just want to leave
17 early?

18 A. I did. You know, I just was tired of the harassment,
19 I was stressed out. I was just tired. I needed a break. I
20 wanted to be with my family. I wanted their support. So I
21 called my brother and said, "We're leaving early," and he said,
22 "When are you leaving?" and I said, "How about today?" Then we
23 left.

24 MR. JENKINS: I have no further questions at this time,
25 your Honor.

1 MS. REYES: Just a few followup, your Honor.

2 REDIRECT EXAMINATION

3 BY MS. REYES:

4 Q. Ms. Terry, isn't it true that Mr. Manzanares received
5 a severance package from his employer at the time that he left
6 -- was it Wellbridge?

7 A. Wellbridge, the company?

8 Q. Yeah.

9 A. He received --

10 Q. That he received some compensation?

11 A. Actually when somebody leaves the company and they
12 have accrued vacation time --

13 Q. If you can just answer my question "yes" or "no."

14 A. I am answering.

15 THE COURT: That's not -- just answer what she asks.

16 If we need followup, your Counsel will ask you to do that.

17 So --

18 THE WITNESS: Okay.

19 Q. BY MS. REYES: Did he receive any compensation in the
20 form of like a severance package at the time that he -- that
21 his employment with Wellbridge ended?

22 A. No, they paid him his vacation pay, and paid him
23 through two weeks.

24 Q. Isn't it true that you didn't have any discussions
25 with Mr. Manzanares about your pregnancy until August of 2007,

1 and particularly August 20th of 2007?

2 A. No.

3 Q. When did you have a discussion with him in July?

4 A. As soon as I found out I was pregnant.

5 Q. And when would that have been; do you remember the
6 date?

7 A. It was between the second and third week of July.

8 Q. And where did this discussion take place?

9 A. In the apartment.

10 Q. And who was present?

11 A. He and I. Amaiya might have been. I can't remember.

12 Q. Isn't it true that you didn't make any visits to Utah
13 the whole time that you and Mr. Manzanares were together; that
14 you made no trips to Utah during that period of time?

15 A. No. In the ten months we dated, I don't think I did
16 -- oh, yeah, I did. Did you say did I make any trips to Utah?

17 Q. During the time that you and Mr. Manzanares dated
18 and lived together, during that whole period of time up until
19 approximately September -- I don't know if it was 6th or 9th, I'm
20 not remembering the correct date -- did you ever come to Utah
21 on a trip? Did you come to Utah?

22 A. No, my family came there to visit me.

23 Q. Okay, and you make a reference to a check that was
24 issued to you by Mr. Manzanares in December, saying that that
25 was a Christmas gift; but doesn't that check also say "For

1 baby," as well?

2 A. In the letter it is specifically stated that he wrote
3 me that it was extra money for me for my -- for Christmas. It
4 said a Christmas present for me, "For you," in the letter he
5 wrote.

6 Q. But the check itself says, "Christmas and baby,"
7 correct?

8 A. (No verbal response).

9 Q. Let's see, I believe it's check -- if you look at
10 Exhibit 3 --

11 A. Correct, but in the letter it says to me.

12 Q. Okay, and that would be the check dated December 19th
13 that you're referring to? December 19th of 2007, correct?

14 A. The check you want me to look at, yes, is December 19th.
15 The letter that I'm referring to, I don't remember which check
16 came with that letter.

17 Q. So what check are you saying went all towards Christmas
18 and not towards the baby?

19 A. He just said in the letter he was sending extra for me
20 for a Christmas present.

21 Q. Okay. Have you ever made any reference to a hospital
22 in Utah in the Colorado proceeding on record an Intermountain
23 Hospital?

24 A. I might have.

25 Q. And did you give birth at Intermountain Hospital?

1 A. No.

2 Q. Okay. Why would you have made a reference to that
3 hospital, then, when it was asked in Court where you -- where
4 the baby was born?

5 A. Because I said the baby was there in the NICU unit.

6 Q. Okay, so the baby was transferred from one hospital to
7 another?

8 A. Correct.

9 Q. Was the hospital that you chose to deliver at, were
10 they unable to care for your daughter at that hospital? Did
11 they not have the abilities to provide the services necessary?

12 A. No, they did.

13 Q. Okay. Why was there a transfer from one hospital to
14 another?

15 A. The hospital wanted to provide the best care for the
16 child; and in anticipation, they said, "You just don't know
17 what might happen. So if she continues to stay with just being
18 premature, our facility is more than apt to care for her;" but
19 just in case, they said they would rather be safe than sorry.

20 Q. Was she born with any specific problems? She was born
21 premature. What were the problems that she faced?

22 A. Typically children who are born three to four weeks
23 premature, their lungs are not fully developed. So she had one
24 lung --

25 Q. But what about your daughter?

1 A. -- so she had one lung that was 25 -- no, not even --
2 just the bottom portion that was not developed.

3 Q. Were there any other complications with the premature
4 birth?

5 A. No. They said actually that for being four weeks
6 premature, that she was a very good, healthy size. That she
7 actually was much larger and much more developed than most four
8 week premature children, babies.

9 Q. And what was her weight?

10 A. Five-and-a-half pounds.

11 Q. Okay, and when was she born on the 17th; what time of
12 day?

13 A. At 2:54.

14 Q. Okay, in the afternoon?

15 A. No, a.m.

16 Q. Oh, a.m., okay. Did they attempt to give you any
17 medications to stop the premature labor, stop the contractions
18 from going forward?

19 A. No, because I was too far along, contractions. My
20 contractions were right on top of each other, 30 seconds
21 apart --

22 Q. And that happened --

23 A. -- for three hours.

24 Q. And how -- how soon did you contact the hospital
25 after you -- you went into premature labor? How long did you

1 wait before you contacted them?

2 A. I waited -- I don't know. I mean, I was having
3 contractions, and they were getting closer and closer apart,
4 and I was in a lot of pain, and I went to the hospital. I
5 mean, I don't -- I don't know exactly from the second that
6 they started until the time that I went to the hospital. All
7 I know is that they were five minutes apart when I went to the
8 hospital, and within an hour they became three minutes apart,
9 and then they became 30 seconds apart, and I was in a lot of
10 pain.

11 Q. Now, in your email that's dated January 11th to
12 Mr. Manzanares, you stated in your previous testimony that
13 -- you said and then you'll be back. When you said and then
14 you'll be back, you were referring to Colorado, or were you --
15 were you implicating that you were going to come back to Utah
16 in this email?

17 A. I was implimenting that I was going to come back to
18 Utah.

19 Q. Does it say there in -- say that anywhere in that
20 email that you will be coming back to Utah after you have your
21 week or maybe longer stay to visit your father?

22 A. No, it doesn't say it in here.

23 Q. Okay, so on February 13th -- let's see, you filed a
24 motion to continue with the Court, and indicated that you had
25 retained an attorney. Who was that attorney that you were

1 referring to? Let's see, I can tell you that that would be
2 Exhibit No. --

3 A. I believe it said I was in the process of retaining an
4 attorney.

5 Q. Let's see, if I can have you look at Exhibit No. 21 --

6 MS. REYES: Your Honor, if I may just ask my client one
7 thing quickly?

8 THE WITNESS: Yeah, it doesn't say that in there.

9 (Counsel conferring with respondent off the record)

10 Q. BY MS. REYES: I apologize. I had you refer to the
11 wrong exhibit. If you'll look at --

12 A. The February 13th email?

13 Q. Right, that you sent to I believe --

14 A. Emily Berkley.

15 Q. -- Emily Berkley. Do you not state in there that
16 you've retained an attorney; you've just retained an attorney?

17 A. Yep.

18 Q. And who would that have been?

19 A. I was talking with two lawyers, and when I sent this
20 email, I was talking to both of them, and was going to retain
21 one of them, and then I ended up not.

22 Q. Were those attorneys Colorado attorneys in Colorado?

23 A. No, they were in Utah.

24 Q. Okay, and why were you searching for a Utah attorney
25 to respond to your Colorado case?

1 A. I wasn't asking them to respond to my Colorado case.
2 He just had filed a paternity petition, basically saying that
3 he wanted the Court in Colorado to say that he was the father
4 of the child. I knew the child was going to be born in Utah.
5 So I was looking for Utah lawyers, because I didn't need a
6 lawyer to respond to him saying that he wants the Court to
7 say he's the father. So I, myself, responded to that.

8 Q. Okay. You indicated that you chose to drive rather
9 than fly in February because you weren't feeling well; is that
10 correct?

11 A. No, because I wanted to leave sooner.

12 Q. Because you wanted to leave sooner; and you left
13 during a snowstorm; is that right?

14 A. Well, in Vail, in February, you can guaranty almost
15 any day you leave you're going to hit a snowstorm.

16 Q. Were you concerned about your daughter and unborn
17 child's safety in driving in a snowstorm, in your condition of
18 being pregnant and not feeling well?

19 A. No, not at all.

20 Q. That didn't concern you?

21 A. I've driven -- I've driven back and forth, back and
22 forth, back and forth so many times in worse weather than a
23 snow sprinkle in Vail.

24 Q. Have you ever spoken with Mr. Manzanares or threatened
25 abortion, as it related to this pregnancy?

1 A. No.

2 Q. You never spoke to him about one of your options was
3 to abort the child?

4 A. I never threatened him with the thought of abortion.

5 Q. Did you talk to him about that as an option for you?

6 A. I told him that the best interests of the child would
7 not be to bring him or her into a hostile environment where one
8 parent is going to be attacking the other parent constantly;
9 and I told him that if we couldn't resolve this as adults
10 and be civil and talk about it and work on it together, than
11 another option would be abortion. He knew that I would never
12 do that, because I'm already a parent. I would never choose
13 to end the life of a child, because that's not what the best
14 interest of the child is.

15 Q. If you would never do that, why would you ever say
16 that to an individual, specifically the father of the child?

17 A. When you have someone who is harassing you and making
18 a very hostile, stressful environment when you're pregnant, and
19 when you already have a child, and you're trying to think of
20 what's best for both of those children, and you have someone
21 who is only thinking of himself, and every time you talk to
22 him, his only words are, "Well, how am I going to feel? How
23 am I going to deal with this? How --" I, I, I, I, it's a very
24 stressful situation. So you start thinking about options of
25 what's going to be in the best interests of the child. He

1 refused to acknowledge that he needed to think of the child
2 first; and that is to put the child into a stable, two-parent
3 home family environment. Yeah, I thought of that option, but
4 that was -- that was as far as it went.

5 Q. Being a single parent, would you say that that's
6 somewhat stressful, raising your seven-year-old daughter as a
7 single parent?

8 A. No.

9 Q. Did you ever express any concerns to Mr. Manzanares
10 that you couldn't handle another child on top of the child you
11 already have?

12 A. No.

13 Q. That was never discussed between the two of you?

14 A. As a single parent, me having --

15 Q. Just "yes" or "no," was that --

16 A. -- another -- to have a --

17 Q. -- was that ever discussed?

18 A. I'm trying -- okay, well, rephrase your question,
19 because I'm not understanding your question.

20 Q. Did you ever discuss with Robert Manzanares the fact
21 that it would be difficult you -- difficult for you to raise
22 another child, because you already had one, and you were
23 raising that child as a single parent?

24 A. As a single parent with another person who is selfish,
25 for sure it's stressful.

1 Q. So you had that conversation with him?

2 A. (No verbal response).

3 Q. I just need a "yes" or "no" answer on that. Did you
4 have a conversation about that?

5 A. No, I would not say it was a conversation.

6 Q. Did you talk to each other about that, or communicate
7 in any way, shape or form, whether it be telephone, email,
8 texting?

9 A. I would say that yes, I told him it would be stressful
10 to try and raise another child with someone as selfish as he
11 is.

12 MS. REYES: Okay, I don't have any further questions,
13 your Honor.

14 THE COURT: Thank you.

15 MR. JENKINS: Just a couple.

16 THE COURT: I might have some followup, and I don't
17 know who it's from; but let me tell you what I want to find
18 out.

19 MR. JENKINS: Okay. If you'd like to go ahead, that --

20 THE COURT: No, I want to do it through Counsel.

21 MR. JENKINS: Okay.

22 THE COURT: My notes reflect that she testified that
23 she decided to drive because she was not feeling well, and it
24 had to do with the pregnancy.

25 MR. JENKINS: Okay.

1 THE COURT: Okay. My question would be is, was it --
2 was it an indication of feeling that the birth was about to
3 come, or why not just wait until you were feeling better and
4 take a 59 -- or an hour and 5 minute flight on the 19th, instead
5 of getting in a car when you're not feeling well and driving
6 10-plus hours for hundreds of miles in the middle of winter?

7 MR. JENKINS: Okay.

8 THE COURT: That's one. Second, I want to know when,
9 as specific as she can, a more specific date, when she reached
10 an agreement with her brother that her brother had agreed to
11 adopt this child. I also want to know when she first consulted
12 Mr. Jenkins as the attorney to seek advice. I want to know if
13 she went alone, or if anybody else went with her. I want to
14 know if she considers Mr. Jenkins at that time her attorney. I
15 want to know who is paying Mr. Jenkins for the advice that he
16 rendered in December -- November/December.

17 THE WITNESS: So would you like me to answer those, or
18 do you want to wait for him to ask them?

19 THE COURT: He will.

20 THE WITNESS: Okay.

21 THE COURT: He will ask the questions.

22 THE WITNESS: Okay. Okay, thank you, your Honor.

23 MR. JENKINS: I hope I took good notes.

24 THE COURT: Thank you.

25 ///

REXCROSS EXAMINATION

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BY MR. JENKINS:

Q. Ms. Terry, I think you heard the Court's question about your decision to travel --

A. Uh-huh.

Q. -- and to be honest, I think I recall you saying that initially when Ms. Reyes questioned you about, you know, why did you come on February 14th. Can you clarify the Court -- for the Court whether, you know, was it because you were feeling bad, baby was imminent, feeling ill for other reasons, you know, why would you choose to -- I guess let's take one at a time.

A. Okay, I was -- I was really stressed out, and so I wasn't feeling well. It's not like I was throwing up. It's not like I just was -- I just was from the stress, I wasn't feeling well.

Q. Okay, and what --

A. So I --

Q. -- do you -- what do you attribute the stress to?

A. Most definitely two things. Robby, his lawyer, is the main thing, and the harassment I kept getting; and then work. Up until this point I had worked -- I mean, I had maintained my level of work, being pregnant; and with the -- with the new findings, I just was stressed out, and I just really wanted to be with family. So I called my brother and said, "I'm leaving

1 early."

2 Q. So you couldn't wait for another four or five days?

3 A. No, I just really -- I just really wanted to be with
4 my family, just really wanted that support from my brother,
5 from my mom, from my sister-in-law. Even as Robby stated
6 earlier, my sister-in-law is my best friend and support system.
7 So se decided to drive the eight hours, seven-and-a-half hours.

8 Q. Okay. When you started that drive, did you have any
9 reason to believe your child would be born shortly thereafter?

10 A. No.

11 Q. Do you know -- can you peg down any closer when you
12 reached an agreement with your brother regarding an adoption?

13 A. Gosh, your Honor, I really can't pick an exact day. I
14 mean, I want to say that it was before Christmas.

15 Q. Okay.

16 A. But I just can't -- I just can't think of when I came
17 to the exact conclusion, the exact date. I apologize.

18 Q. Let me ask you, when -- when I was first contacted --

19 A. Which you might remember better than I.

20 Q. Well, I'm just for -- from -- I'm going to ask you
21 from your perspective. If we need to put your brother on the
22 stand, we'll ask him --

23 A. Right.

24 Q. -- from his perspective what he recalls. Do you
25 recall if that contact was made by you, or was made by your

1 brother?

2 A. Well, my brother and I were working together, and
3 since he obviously lived here and phone numbers are easier to
4 access for him from Utah, I believe he contacted you first; but
5 he asked me if -- if I wanted him to call you, and I said,
6 "Have -- call him and have him call me."

7 Q. Okay, and do you remember when this was?

8 A. I want to say it was the week before Thanksgiving.
9 That's the best I can remember, because I -- yeah.

10 Q. When you say you were "working with" your brother,
11 what do you mean by that?

12 A. I just mean that family support system, emotional.
13 I would call him for emotional. I would call him when I was
14 continually getting phone calls and email harassment from Robby
15 and his lawyer. I didn't have anybody else to -- to turn to
16 for support. So I'd called my brother and just ask for his
17 advice and help and options. I just told him I wanted what was
18 best for the baby, what are my options, you know. So --

19 Q. Do you --

20 A. -- that's what I mean by "working."

21 Q. Okay, and do you recall back around Thanksgiving time,
22 whenever it was that the contact was first made with my office,
23 at that time it sounds like -- I don't want to put words in
24 your mouth -- but had an agreement been reached that your
25 brother would adopt the baby at that point?

1 A. No.

2 Q. Okay, and --

3 A. It wasn't until -- it wasn't until later.

4 Q. And if I heard you correctly, was -- well, you
5 indicated you were working with your brother to evaluate
6 options. Is that why you wanted your brother to contact me?

7 A. Yes. I wanted him to -- I told him to contact an
8 adoption lawyer in Utah, and he got names and numbers. I had
9 asked him to get some names and numbers of adoption lawyers
10 in Utah, and he got names and numbers; and he called you, and
11 that's when I talked to you.

12 Q. Okay, and to be honest, I don't remember. Did you
13 come in my office at that time?

14 A. I don't remember. I think it was over Thanksgiving.

15 Q. That we talked or something?

16 A. Right.

17 Q. Okay, and I -- to be honest, I don't recall. Do you
18 know who paid for that time?

19 A. I did.

20 Q. Okay. See, I didn't know that either, so --

21 A. Yeah.

22 Q. Okay. At your -- we've talked some about Utah, and --

23 THE COURT: Hold on for one moment. Hold on.

24 MR. JENKINS: Pardon?

25 THE COURT: Do you consider Mr. Jenkins to have been

1 your attorney?

2 THE WITNESS: At the time I -- I did think he was.

3 THE COURT: Okay, why were you -- if you hadn't reached
4 an agreement with your brother to do the adoption or hadn't
5 discussed it with your brother to do the adoption, why were you
6 having a Utah lawyer contacted about adoption when you lived in
7 Colorado?

8 THE WITNESS: Well, I knew that I wanted the child to
9 be adopted. I knew that that's what was the best option; and
10 being from Utah, I wanted the family support. So I -- my
11 family supporting me with the adoption idea. So that's when
12 I said, "Let's do it in Utah."

13 THE COURT: Well, when did you decide you wanted to put
14 the child up for adoption in Utah?

15 THE WITNESS: October. So it was before I decided my
16 brother. I apologize if I didn't understand the question
17 first.

18 THE COURT: Thank you.

19 MR. JENKINS: Did that cover everything?

20 THE COURT: Thank you.

21 Q. BY MR. JENKINS: Just now again you've talked about
22 Utah and the family support and things. It sounds like you
23 come back to Utah occasionally?

24 A. Quite a bit.

25 Q. And when you come, where do you stay?

1 A. My mom's house.

2 Q. Okay.

3 A. She has --

4 Q. And why do you stay at your mom's house?

5 A. Because Amaiya and I have our own rooms, our own
6 bathroom, our own section of the house. So it's -- it's not
7 like we're on the couch or anything. We have our own area that
8 she leaves there for us, because we always come back.

9 Q. Okay, and how long have you had that room at your
10 mom's house?

11 A. Oh, four years at this particular house; and then
12 every house she's lived in before, we did as well.

13 MR. JENKINS: Okay. I think that's all I have.

14 THE COURT: Thank you. You may step down, I assume.
15 Thank you. Let's take a short recess.

16 (Recess taken)

17 THE COURT: You guys waited for me after lunch; so
18 it balances out. Okay, Counsel, I think we're ready to go
19 again. I can't remember, was she dismissed, or did you have
20 a followup? I think we dismissed her, didn't we?

21 MS. REYES: Your Honor, I had a -- yeah, I just had a
22 couple followup before the Court indicated she was dismissed,
23 but I don't think it's really relevant. Just --

24 THE COURT: If you want to put her back on, let's put
25 her back on. If you're done --

1 MS. REYES: Well, I can indicate to the Court the two
2 issues I was going to address, and if the Court doesn't feel
3 relevant --

4 THE COURT: Well, it's -- it's your call.

5 MS. REYES: Okay.

6 THE COURT: You try your own case.

7 (Counsel conferring with respondent off the record)

8 MS. REYES: I'd just -- yeah, if I could recall her
9 just quickly.

10 THE COURT: Would you get back on the stand, please,
11 and you're still sworn.

12 REDIRECT EXAMINATION

13 BY MS. REYES:

14 Q. Ms. Terry, I just need some clarification on some
15 issues. You keep referring to this ongoing harassment from
16 Robert Manzanares and his attorney. Can you refer in specifics
17 what was harassing, what -- was it emails; and if so, when were
18 they, and how many; and if it was a phone call, when did that
19 call take place and how many calls?

20 A. It was the -- the emails, and just the language in the
21 emails and the language in the documents that they submitted to
22 the Court.

23 Q. And how many emails did Emily Berkley send you? You
24 say "emails." How many do you recall receiving from her?

25 A. Not document -- not document related?

1 Q. Any emails that you claim were of a harassing nature.
2 You say that they were harassing you. I'm just wondering what
3 -- what you're referring to.

4 A. Right, there were -- there were three emails before
5 Christmas, and a phone call. Then after Christmas, besides the
6 letters from Robby, then there were documents. So it was just
7 her -- her language in the emails and the documents that they
8 submitted to the Court defiling my character, just full of lies
9 about me. That's what was very, very stressful --

10 Q. So are you re --

11 A. -- and the hostile environment, work environment that
12 Robby created for me at work, was very stressful.

13 Q. Okay, I don't -- I don't think we're -- that's beyond
14 the questions I've asked you.

15 A. Oh, sorry. You just said "harassment." So I was
16 explaining all of the harassment that I was referring to.

17 Q. Okay. When you say "emails from Robert," were those
18 emails contained in our Exhibit 2? Those were the ones that
19 were upsetting to you? If you look at Exhibit 2, there's a --
20 several different -- I believe that's Exhibit 3. I'm happy to
21 come and look for that, if you'd like. I know it would be on
22 a -- a brown exhibit number, instead of the orange colored.
23 These are the -- the only email correspondence you received
24 from Mr. Manzanares, correct?

25 A. When I went through the email there were other --

1 you know, I'm not -- I'm not sure. I have a stack of all the
2 email correspondence; and whether they're all included in this
3 exhibit, I'm not sure. I would have to go through and read
4 them one-by-one.

5 Q. If you look through these emails, are any of these
6 emails what you would be consider -- what you would consider
7 harassing, in Exhibit 2?

8 A. Just these emails?

9 Q. Right, in Exhibit 2, are any of these of the nature
10 of harassment?

11 A. No, just these emails; but like I said, the letters
12 and the work environment were also under the umbrella of
13 harassing.

14 MS. REYES: Okay. I don't have any further questions,
15 then, your Honor.

16 THE COURT: Thank you.

17 MR. JENKINS: One question.

18 RE CROSS EXAMINATION

19 BY MR. JENKINS:

20 Q. Ms. Terry, did you ever have any verbal communications
21 with Ms. Berkley?

22 A. Yes.

23 Q. Did you ever have any that you felt were threatening?

24 A. Yes.

25 Q. Do you know when that occurred?

1 A. Yes, February 20th.

2 Q. And how -- were you talking by phone or in person?

3 A. She left me a voice mail --

4 Q. Okay.

5 A. -- on my cell phone.

6 Q. And what did that say?

7 A. She --

8 MS. REYES: Your Honor, I'm going to object as to
9 hearsay.

10 THE COURT: Yeah, and I was going to say, and I think
11 the question was related to as to why she wasn't feeling well
12 and needed to get out of the environment of Denver; and that
13 occurred before February the 20th. Now we're -- it occurred on
14 February --

15 MR. JENKINS: Your Honor, Ms. Reyes just questioned her
16 at length about harassment she felt she was receiving at the
17 hands of Mr. Manzanares --

18 THE COURT: Right, but the scope of the question, as I
19 understood it is, is why -- she was saying the reason I needed
20 to get out of town and I wasn't feeling well is because he was
21 harassing me and doing all these things to me, and that's why I
22 just wanted to get out of there. (Inaudible) --

23 MR. JENKINS: Okay, withdraw the question.

24 THE COURT: No, I'm -- am I wrong on what you asked?

25 MS. REYES: No, I was just going over his questioning;

1 and that was my understanding, is she was saying that the
2 reason I wanted to get out and do these things --

3 THE COURT: Get out of town --

4 MS. REYES: -- was because I --

5 THE COURT: -- which she left prior to the 14th.

6 MS. REYES: -- under this umbrella --

7 THE COURT: So anything before --

8 MS. REYES: -- of harassment.

9 THE COURT: -- anything before February 14th I think is
10 relevant on that issue.

11 MS. REYES: Okay.

12 THE WITNESS: Could I -- could I ex --

13 THE COURT: No, you may not, not unless there's any
14 questions pending. Do you want to follow up with anything
15 else, in light of my understanding of where she was going with
16 her questioning?

17 MR. JENKINS: No, that's fine.

18 THE COURT: Okay. If you want to go anything broader,
19 you're welcome.

20 MR. JENKINS: (No verbal response).

21 THE COURT: All right. Anything else?

22 MS. REYES: No.

23 THE COURT: You may step down.

24 All right, your next witness, please.

25 MS. REYES: Your Honor, I do have Elizabeth Manzanares

1 and Robert Manzaanres. However, I can attempt to proffer
2 their testimony; and if the proffer is accepted, we wouldn't
3 necessarily have to call them. I'm happy to call them, but to
4 expedite things --

5 THE COURT: It's up to Mr. Jenkins, if he'll agree to
6 that; or he can -- you can proffer them and let Mr. Jenkins
7 cross.

8 MR. JENKINS: I would be interested to see what they
9 would have to say on the consent issue. I don't know what they
10 would have that would even be relevant.

11 MS. REYES: I don't know how relevant it is, basically;
12 and that's why I'm saying I don't want to waste a lot of the
13 Court's time, but I can attempt to proffer, and if they want to
14 cross examine, obviously they're here and available to do that.
15 I don't know if I need them in the room to --

16 MR. JENKINS: Well, I'd be interested in the subject
17 matter, and then perhaps we can -- in the subject matter we can
18 ascertain -- because there's a whole line of questioning, and I
19 would have loved to get into with Ms. Terry, but it went to the
20 custody issue, not to --

21 THE COURT: Right.

22 MR. JENKINS: -- consent.

23 THE COURT: Right.

24 MR. JENKINS: And if this is all custody information,
25 then --

1 THE COURT: Well, proffer what you think they will
2 testify with respect to custody.

3 MS. REYES: With consent?

4 THE COURT: Excuse me, consent.

5 MS. REYES: Okay.

6 THE COURT: I don't know why I keep inbreeding those
7 today, but I think you both know what I'm trying to say. Thank
8 you.

9 MS. REYES: Your Honor, Mr. -- Elizabeth Manzanares
10 and Robert Manzanares, Sr. Would be testifying that they were
11 contacted on approximately two occasions by Carrie Terry. On
12 those two occasions -- well, I need to step back. On one
13 occasion they asked if they could put her on speaker so that
14 they could both hear the conversation and respond.

15 That conversation consisted of Carrie Terry pleading
16 with them to have Robert sign a consent for adoption. They
17 were basically a listening ear, but ultimately told her that
18 they knew that Robert wasn't willing to do that, and that they
19 didn't feel like it was in his best interest to do that. That
20 would be basically the gist. There was another conversation,
21 as well, that consisted of approximately -- oh, I'm sorry, an
22 email that was received that would basically confirm that
23 conversation and whatnot. So --

24 THE COURT: Wasn't one of your emails already in an
25 attachment, that email?

1 MS. REYES: I believe it is. Well, but there are some
2 emails from Liz Manzanares and -- between Liz Manzanares and
3 Carrie Terry. So I don't know how relevant it is, just the
4 fact that they put her on notice as well that Robert wasn't
5 willing to consent.

6 THE COURT: I don't -- well, let me be blunt. I don't
7 think that's really a contested issue. I think everybody knows
8 he wasn't going to agree. I don't think it's really a contested
9 issue either that she was making efforts to get him to change
10 his mind.

11 MR. JENKINS: I agree.

12 THE COURT: So if there's anything that helps us with
13 respect to the legality of whether or not his consent is or is
14 not needed in this case, then I would like to hear it.

15 MR. JENKINS: I didn't hear anything in what she --

16 THE COURT: Yeah.

17 MR. JENKINS: -- she suggested about -- as far as
18 Mr. Manzanares' consent.

19 THE COURT: Okay, anybody else, then, on this issue of
20 consent from your side?

21 (Counsel conferring with respondent off the record)

22 MS. REYES: Your Honor, the only other two people that
23 we would be calling with regard to the consent issue would be
24 the petitioner, Scott Byington and Julissa Byington, just for
25 the purpose of, again, and I think it goes to maybe what we

1 just dealt with previous, but there was communications between
2 Robert Manzanares and them. They knew his position with regard
3 to adoption.

4 There was never any disclosure from them to my client
5 Robert Manzanares of their plan to adopt the child, but they
6 knew coming from him that he was not wanting to adopt the child
7 out, nor consent the adoption. I don't know if it has any real
8 legality, but just for the purpose of facts on the record.

9 THE COURT: Well, that was -- okay. If you -- I -- let
10 me back up. The testimony that I recall is, is she basically
11 admitted she never advised Mr. Manzanares that she intended to
12 place the child with adoption with her brother and sister-in-
13 law, and that she was intending to do it in Utah, okay?

14 Now, if you want to -- that's at least from her side.
15 If anybody else is containing -- or contesting that he was told
16 that by somebody from your side, let's get that evidence out.
17 If not, and that's what the fact is ultimately at the end of
18 the day, then we can leave it at that; but that's your call.

19 MS. REYES: Your Honor, I'm not aware of any -- any
20 evidence that way from --

21 THE COURT: Okay. Well, let's see if they claim they
22 did.

23 MS. REYES: Okay.

24 THE COURT: If they claim they did, then you better
25 call them.

1 MS. REYES: Your Honor, can -- may I clarify something?

2 THE COURT: Mr. Jenkins, any evidence on that from your
3 side that --

4 THE COURT: I don't think so on that specific point.
5 I don't think we would dispute that neither the Byingtons or
6 Ms. Terry told him specifically what -- what her adoption plans
7 were.

8 THE COURT: Okay. Anything else, then?

9 MS. REYES: Your Honor, we just want a clarification.
10 It was my recollection at the previous hearing -- well, I
11 guess I believe the telephone conference that the Court had
12 with Counsel, that the Court was requiring the parties to
13 be present for the purpose of these hearings. We're just
14 a little concerned that one of the petitioners hasn't been
15 present throughout this whole proceeding. We would like --

16 THE COURT: Well, if you're going to call her as a
17 witness, and you need her here, if she's your witness, because
18 of that, then fine, let's get her, but --

19 MS. REYES: Well, I guess it depends on what the Court
20 does on the consent issue. I don't know -- I don't know if the
21 Court's prepared to make any rulings, or if the Court's just
22 going to take all the evidence under advisement.

23 THE COURT: No, I'm going to take all the evidence.
24 I'm going to hear it all.

25 MR. JENKINS: So you're going to take all the custody

1 evidence as well, before we get into that?

2 THE COURT: We're going to hear all of this, because
3 we've only got two days.

4 MS. REYES: Then I would anticipate we would need her
5 here for purposes of --

6 THE COURT: That's my -- well, let's state where we're
7 at.

8 MS. REYES: Okay.

9 THE COURT: Are you done with consent?

10 MS. REYES: Yes.

11 THE COURT: Okay, rebuttal on consent?

12 MR. JENKINS: The only thing I'd like to put on is
13 Mr. Byington.

14 THE COURT: Please. Mr. Byington, please be sworn.

15 COURT CLERK: Please raise your right hand. You do
16 solemnly swear the testimony you are about to give will be the
17 truth, the whole truth and nothing but the truth, so help you
18 God?

19 THE WITNESS: I do.

20 COURT CLERK: Take the stand, please.

21 BRANDON SCOTT BYINGTON,

22 having been first duly sworn,

23 testified as follows:

24 DIRECT EXAMINATION

25 ///

1 BY MR. JENKINS:

2 Q. Mr. Byington, just briefly, do you recall -- let me
3 just ask you first of all what your name is.

4 A. Brandon Scott Byington.

5 Q. Okay, and are you -- how are you -- how are you
6 related to Carrie Terry?

7 A. She's my sister.

8 Q. Okay. Ms. Terry has testified to some extent about
9 the involvement that you had in helping her as far as the
10 adoption process and things. Can you tell the Court who --
11 who -- whether you or Ms. Terry contacted my office first?

12 A. I contacted your office.

13 Q. Okay, and do you recall the purpose for contacting our
14 office?

15 A. My con -- the purpose for contacting your office was
16 for legal counsel with relationship to a potential future
17 adoption.

18 Q. Okay. At the time you contacted my office, had there
19 been a decision made to place the baby with you and your wife?

20 A. There had not been.

21 Q. Okay.

22 THE COURT: Had there been -- excuse me, had there
23 been discussion to have it placed with you? What I need is
24 clarification --

25 THE WITNESS: Sure.

1 THE COURT: -- on the potential future adoption. Was
2 that solely limited to the issue of placing the baby up for
3 adoption with anybody in the world that would have the child?

4 THE WITNESS: Sure.

5 THE COURT: Or placing the baby up for adoption with
6 you?

7 THE WITNESS: Yes.

8 THE COURT: Do you see where I'm coming from?

9 MR. JENKINS: I see.

10 THE COURT: I need a distinction.

11 MR. JENKINS: Okay.

12 THE WITNESS: Okay. So to respond to your question is,
13 is my wife had made indications to Carrie -- my wife Julissa
14 had made indications to Carrie that she was willing to accept
15 and adopt the child as our own. I had been a proponent of
16 adoption for a long time, and had expressed interest to my
17 wife to adopt at some point in time in the future.

18 THE COURT: And was that done before the contact was
19 made to Mr. Jenkins' office?

20 THE WITNESS: Yes, this has been a known thing for
21 multiple years.

22 THE COURT: Thank you.

23 Q. BY MR. JENKINS: When you say "a known thing for
24 multiple years," you weren't -- you aren't talking about all
25 of Ms. Terry's kids. You're --

1 A. No, just a -- it was a known fact that I wanted to
2 adopt at some point in time in the future.

3 Q. Okay. When you contacted me, who -- did you -- well,
4 let me ask you. Did you consider me to be your lawyer?

5 A. I did.

6 Q. How about Ms. Terry; what was your understanding as
7 far as her involvement with my office?

8 A. The understanding that I was under was that I would be
9 represented by you, and that if she needed some legal counsel
10 or something like that, that I could help her with some of that
11 information; and if we needed to, we would search for her own
12 legal counsel.

13 Q. Was there a time when we had a conversation, all three
14 of us?

15 A. There -- yeah, there was a couple of times. There was
16 one over Thanksgiving, and then there was one in the month of
17 December.

18 Q. Okay, and in those conversations, you know, without
19 getting into -- do you recall, you know, when the decision was
20 made that you and your wife were going to adopt the baby?

21 A. I know that my wife and Carrie had talked about it. I
22 would probably say the end of November, mid December, in that
23 range; and that they came to me with -- with going forward with
24 it the end of December on into the first of January.

25 Q. Okay, and in the discussion in November -- to be

1 honest, I don't recall what was discussed, but if you could
2 tell me, was it primarily options, or was it something more
3 specific?

4 A. Actually I just wanted the best advice counsel with
5 relationship to the situation at hand, which was relationship
6 to placing adoption for a child that wasn't birthed in the
7 state. The reason why we wanted to -- looked at Utah as the
8 birth state was is that Utah is a very friendly adoption state.

9 MR. JENKINS: Okay. No other questions, your Honor.

10 THE COURT: Thank you. Cross.

11 CROSS EXAMINATION

12 BY MS. REYES:

13 Q. Mr. Byington, was there a time when Mr. Manzanares
14 contacted you approximately February 25th by phone?

15 A. Approximately, correct.

16 Q. Do you remember that communication with him?

17 A. I do. I wouldn't say that I know it verbatim or word-
18 for-word, but I have the -- I remember the logists of the
19 conversation.

20 Q. Did he ask you if you had any knowledge about the
21 birth of his daughter?

22 A. He did. He -- would you like me to tell you the
23 conversation, or just respond to your question?

24 Q. You can just respond, and then if I need further
25 information, I'll let you know.

1 A. Sure.

2 Q. Do you recall him asking about -- if you had any
3 knowledge about the birth of his daughter, or the whereabouts
4 of his daughter?

5 A. He did.

6 Q. And did you disclose to him what information you did
7 know?

8 A. I just said that it wasn't up to me at that point in
9 time to make a decision.

10 Q. Okay, did you ever --

11 THE COURT: I'm sorry, would you tell me that again?

12 THE WITNESS: It wasn't up to me at that point in time
13 to make a decision, with relationship to my -- the depth of
14 contact I could have with him.

15 Q. BY MS. REYES: Do you believe -- did you -- did you say
16 anything to him that would lead him to believe that you had
17 custody of his daughter at that time?

18 MR. JENKINS: Your Honor, I think these questions go
19 far beyond consent. It's after things are already done, and
20 after Mr. Manzanares should have done what he needed to do.

21 THE COURT: Overruled. Go ahead and answer.

22 THE WITNESS: I'm sorry, repeat the question.

23 Q. BY MS. REYES: Did you provide him with any information
24 which would have placed him on notice of the fact that you had
25 -- you and your wife had custody of the child?

1 A. No.

2 Q. His daughter?

3 A. No, I did not.

4 Q. Did you indicate to him that he would be hearing from
5 a lawyer?

6 A. I did say -- yeah. Yeah, at some point in time that
7 he would be responded to by legal Counsel.

8 Q. And what did you anticipate your legal Counsel would
9 -- was that Mr. Jenkins?

10 A. Correct. I hadn't had the opportunity to confer with
11 Jenkins with relationship to the amount of conversation I could
12 have with Mr. Manzanares.

13 Q. And so what do -- what were -- or when you said to
14 Mr. Manzanares, "You'll hear from my legal Counsel," what were
15 you anticipating would be done?

16 A. I didn't say "my legal Counsel." I just said that he
17 would hear form legal Counsel.

18 Q. So --

19 A. At some point in time. I didn't go into specifics.

20 Q. -- in that statement, what did you -- what did you
21 mean by that? What was --

22 A. He had called, and initially he said is, "I understand
23 that my -- that a child has been born, a little girl has been
24 born, and I'm desirous to know the details of her; and I'm
25 fearing for Carrie that she has committed some crimes and is

1 going to go to jail, and I want to help her in the best of my
2 ability." I responded to him saying that, you know, that she
3 had sought legal Counsel, and she -- and he will be responded
4 to legal Counsel at some point in time in the future.

5 Q. So that was Carrie's legal Counsel that you were
6 referring to?

7 A. I just said "legal Counsel." I didn't infer.

8 Q. Okay, and so in your mind, though, who were you
9 thinking of, when you said, "You'll hear from legal Counsel"?

10 A. I don't recollect. I just remember that was the
11 logist of our conversation, is that he was concerned that she
12 had broken some laws and she was going to go to jail. I just
13 said that basically that she has consulted with legal Counsel,
14 and that he'll be hearing from legal Counsel in the future.

15 Q. So were you saying that because you truly believed
16 that to be a true statement, that he would hear from legal
17 Counsel in the future; or were you saying that just to give --

18 A. No, at some point in time -- at some point in time he
19 would hear from legal Counsel.

20 Q. With regard to what issue?

21 A. With regard to the issue that he said that he had --
22 had previous notices, filed a petition in Colorado.

23 Q. So you were referring to --

24 A. A paternity petition.

25 Q. So he would refer -- okay, but you didn't specify that

1 to him? You didn't say, "You'll be hearing from Counsel about
2 this adoption proceeding"?

3 A. Uh-uh, I did not.

4 Q. You just said he'd be hearing from legal Counsel?

5 A. Correct.

6 Q. Okay. Did he seem concerned about the welfare and
7 safety of his child, his unborn child -- well, his child that
8 had been born at that time?

9 A. The impression that I got was just more of I feel
10 like, you know, Carrie's committed -- or Carrie's committed
11 some type of illegal act, broken some laws and she's going to
12 go to jail. So that was the -- that was the aforementioned
13 tone of the conversation that I understood it as.

14 Q. But he was calling for the purpose of trying to obtain
15 information about his daughter, correct?

16 A. He did mention that in the conversation, correct.

17 Q. And you chose not to disclose anything to him at that
18 time?

19 A. I hadn't spoke with legal Counsel -- my legal Counsel
20 as to what I could or could not say.

21 Q. Okay.

22 A. So instead of having him call everybody in my family,
23 I just said that "You'll be hearing from legal Counsel."

24 Q. Did he contact you after that point?

25 A. He did not.

1 Q. Okay, and at the last hearing that was held before the
2 Court on July 1st, where were you and your wife on July 1st?

3 A. We were stuck in San Francisco, coming back from a
4 family reunion. We were flying standby and we had been bumped
5 for three days.

6 Q. Okay, and what airline were you flying with?

7 A. Jet Blue.

8 Q. Okay, and when were you anticipating arriving back in
9 Utah?

10 A. Sunday, before July 1st.

11 Q. Do you remember what day that would have been? Would
12 it have been -- was July 1st a Monday?

13 A. No, July 1st was a Wednesday. I want to say that it --

14 Q. Okay.

15 A. The 29th.

16 Q. You anticipated arriving back on the 29th?

17 A. Whatever the Sunday is, that last Sunday of the month
18 of June.

19 Q. Okay, but as of Wednesday, if it was -- as of July 1st,
20 you still had not made it back yet?

21 A. Correct. We had been bumped two times in Richmond,
22 Virginia; and then in our desperation to try and get here to
23 the Court proceedings, my wife tried to get us to the west
24 coast; and Jet Blue said that we had -- had availability on a
25 flight from San Francisco. So we flew to San Francisco, and

1 they ended up bumping us there. That's when I called my legal
2 Counsel and says that they were not allowing us on any flights.
3 That they only had one flight a day, and that we would not be
4 attending.

5 Q. And is there a reason why your wife isn't here today?

6 A. Yes, she's taking care of our kids. I have two boys
7 and a daughter.

8 Q. Okay, and what are their ages?

9 A. My oldest boy just turned seven, and my youngest boy
10 will be four in October.

11 Q. Okay, and the daughter you're referring to, is that --

12 A. Correct, the baby in question.

13 Q. -- Robert Manzanares' child?

14 A. Correct, my baby Kaiya, correct.

15 MS. REYES: Okay. If I can just have a moment, your
16 Honor?

17 (Counsel conferring with respondent off the record)

18 MS. REYES: I don't have anything further, your Honor.

19 THE COURT: Counsel, I have some questions and it can
20 come through either one of you. I like to know the extend
21 and the nature of this understanding of the Colorado legal
22 proceedings prior to the time that he signed the adoption
23 petition on February the 16th.

24 MS. REYES: Does the Court want me to address that?
25 I'm happy to.

1 THE COURT: If you want to --

2 MS. REYES: I will, your Honor.

3 MR. JENKINS: Can I clarify? We're talking about
4 Colorado --

5 THE COURT: The paternity action whereby --

6 MR. JENKINS: -- the paternity proceedings?

7 THE COURT: --he had filed and the answer acknowledging
8 that he was the father. I want to know what they did and didn't
9 know when they signed this adoption petition here.

10 REDIRECT EXAMINATION

11 BY MR. REYES:

12 Q. Mr. Byington, were you aware that there was a Court
13 proceeding filed in Colorado between Mr. Manzanares and your
14 sister Carrie Terry?

15 A. I do. I did.

16 Q. And when were you aware of that proceeding? When did
17 you first become aware of that proceeding?

18 A. I was-- I got notice of those emails and notifications
19 shortly after my sister Carrie was notified.

20 Q. Do you recall an approximate time when that would have
21 been; what month and --

22 A. Well, there was the paternity petition that was issued
23 in January 16th.

24 Q. And how soon after January 16th were you made aware of
25 that?

1 A. An hour, a day or so. Short time.

2 Q. Okay.

3 A. Less than a week.

4 Q. Okay, and what was your understanding -- well, let me
5 back up. You filed a petition to adopt in this Court; is that
6 true?

7 A. Correct, in front of Judge Hilder.

8 Q. Okay, and when was that signed?

9 A. The 20th of February.

10 Q. Okay, you signed your petition for adoption on --

11 A. Oh, I'm sorry, I thought you meant the -- the --

12 Q. No.

13 A. -- the consent and stuff. I'm sorry, repeat the
14 question.

15 Q. When did you and your wife file or sign the petition
16 for adoption in this Court?

17 A. I know that our lawyer sent us an email. I want to
18 say it was somewhere in February-ish, end of January, February-
19 ish. I'd have to look at my emails. There was a bunch of
20 paperwork that we had to go through and fill out and details
21 and things of that nature.

22 Q. So you were actually presented with paperwork to start
23 an adoption process back in maybe January or February before
24 the child's birth?

25 A. Let me restate. That was the second time she had

1 submitted it, because I had -- I had to get another copy of
2 my driver's license submitted. So she reminded me. I think
3 originally we'd received paperwork I want to say the end of
4 December. I received a couple of emails from his office.

5 Q. So you received an initial draft of a petition for
6 adoption in sometime in December, but it wasn't signed by you
7 or your wife at that point in time?

8 A. Correct.

9 Q. When did you actually sign the documents and file them
10 with the Court?

11 A. You know, I don't remember. I don't recall.

12 Q. Okay, so do you --

13 A. I think it's on the documents.

14 Q. Okay, with -- on file with the Court, the adoption
15 process?

16 A. Uh-huh.

17 Q. Okay, but you recall it was sometime in possibly
18 February?

19 A. Correct.

20 Q. Okay, and so you said that you received notice of the
21 paternity action shortly after it was filed with the Court in
22 Colorado?

23 A. Correct, (inaudible).

24 Q. Within a day or an hour or a day, you said?

25 A. Short -- yeah, short difference. Could have been an

1 hour, could have been a day. I don't recall exactly.

2 Q. And what's your recollection as to the -- the process
3 that you understood that -- that petition to be in in Colorado?

4 A. Basically that he was asking for a declaration of
5 status of biological father. I sought legal Counsel, and went
6 from there.

7 Q. Did you feel like you had to do something? When you
8 say, "I advised legal Counsel," was that on behalf of your
9 sister?

10 A. No, on behalf of myself. Just wanted to know what
11 that meant for us.

12 Q. Okay.

13 A. By him filing action in Colorado, I wanted to know
14 what that meant for us.

15 Q. So do you believe you filed the petition for adoption
16 before or after you had knowledge of the Colorado matter?

17 A. Honestly, I don't recollect. I don't remember. I
18 believe it's on the documents somewhere.

19 Q. Do you think it was within the same time period,
20 though? Is that why you're having a hard time recollecting?

21 A. Again, I don't recall.

22 THE COURT: I'm curious to know when he received
23 information about his sister's acknowledging Mr. Manzanares
24 was the natural father and filed the proceedings in Colorado.

25 Q. BY MS. REYES: Okay. Mr. Byington, your sister filed a

1 response with the Colorado Court in response to the petition
2 for paternity and request to enjoin adoption.

3 A. Uh-huh.

4 Q. Do you recall receiving that document or viewing that
5 at any time?

6 A. I do.

7 Q. And approximately when would that have been?

8 A. Shortly thereafter that she had -- had received the
9 January 16th document.

10 Q. Did you -- did you view her response before she filed
11 it with the Court? Did you look it over before she filed it
12 with the Colorado Court?

13 A. I did.

14 Q. Did you give her any advice?

15 A. I did.

16 Q. Okay, and what was your advice?

17 A. My advice was, is answer the questions as honestly and
18 truthfully as possible, the ones that needed to be answered.
19 There were questions in there that was -- felt -- she found to
20 be very hurtful. I just says, you know, "Put those aside and
21 just, you know, don't -- don't necessarily need to elaborate,
22 proofreading." Then again just sought counsel from my lawyer
23 as to how perhaps we should best proceed going forward.

24 Q. When were you first placed on notice that Robert
25 Manzanares was the biological father of -- of this infant girl

1 that was born on February 17th? Did he have a conversation with
2 you about that? I mean, was there ever any -- okay, let me
3 back up here. Well, when was your first -- when did you first
4 learn of the fact that your sister was pregnant?

5 A. I want to say it was about the time that we were in
6 Colorado at a wedding, towards the end of July.

7 Q. So sometime in July, at the end of July is your
8 recollection?

9 A. Uh-huh.

10 Q. And was there any dispute at that point in time who
11 the father was? Did Carrie represent who the father was to
12 you?

13 A. As far as I know she had been monogamous. So I -- it
14 wasn't a question that I was prying to see with whom she had
15 had sexual relations, since they had, you know, co-habitated
16 for some time. It was one of those inferences, if you will.

17 Q. And apparently she's testified that she confides in
18 you, and that you're a -- you were a support person during this
19 period of time.

20 A. Sure.

21 Q. I'm assuming there was conversations that you had
22 about Robert and Carrie and the baby, the unborn child at that
23 point in time?

24 A. Correct.

25 Q. So there was no doubt in your mind, you didn't have to

1 question whether or not Robert Manzanares was the father; it
2 was just pretty much known to you?

3 A. Like I said, it was one of those inferences. I didn't
4 go in and per -- you know, ask her, you know, with everybody.

5 Q. Uh-huh.

6 A. It was one of those inferences. No, I didn't question,
7 if that's what you're asking.

8 Q. Okay, and the first time you saw her, was there a
9 time that she actually disclosed to you or admitted to you that
10 Robert was the father of this child?

11 A. I'm sure it came up in conversation that, you know,
12 she says that, you know, "He's the father," and things of that
13 nature. I think that we had more of that dialogue towards --
14 or after the filing in January.

15 Q. And then do you recall when -- so do you think you
16 filed in January? You just referred that filing in January --

17 A. No, his --

18 Q. Oh, I'm sorry, his filing in January of --

19 A. Correct.

20 Q. -- the paternity action?

21 A. That's when we had a lot of conversations with
22 relationship to the biological father and things of that
23 nature.

24 Q. Okay, but as of July, late July of 2007, you had
25 knowledge that your sister was expecting a baby; and it was

1 assumed by you and was never -- you were never told otherwise
2 by her that the father was Robert Manzanares?

3 A. Correct.

4 THE COURT: Thank you. Counsel, anyone need to follow
5 up?

6 MR. JENKINS: No questions.

7 THE COURT: Thank you. You may step down. Any ready
8 further?

9 MR. JENKINS: Your Honor, that's all I have. I would
10 like -- like I would appreciate being able to have some time to
11 do some argument on the consent issue, walk the Court through
12 some of the -- some of the statutes and the things that are --

13 THE COURT: Well, we can -- let's save that until the
14 end.

15 MR. JENKINS: Until we're done with everything?

16 THE COURT: Please.

17 MR. JENKINS: Okay.

18 THE COURT: Anybody else on consent?

19 MR. JENKINS: I don't have anybody else.

20 THE COURT: All right. Rebuttal? Anything further on
21 consent?

22 MS. REYES: No, your Honor.

23 THE COURT: All right. Shall we go ahead and move into
24 the best interests of the child?

25 MS. REYES: Yes, your Honor. If I may indicate that

1 Vivian Burgos, she indicated by way of a message to my office
2 that her availability both today and tomorrow would be better
3 for her after 3 o'clock. So I don't know if now would be a
4 good time to try and get her on the phone or -- I don't want to
5 cut into maybe time tomorrow --

6 THE COURT: Well --

7 MS. REYES: -- where we would be arguing legal issues.

8 THE COURT: -- I think Mr. Jenkins has a point in the
9 sense that maybe you should proffer to us what she intends to
10 say, and how she has any information that's relevant for where
11 you're going to be going on the best interests, okay? She's
12 never met the mother, never met the child, right? She's only
13 met with the father?

14 MS. REYES: That's correct, your Honor.

15 MR. JENKINS: She -- as I understand it, she did a home
16 -- home evaluation of Mr. Manzanares --

17 THE COURT: Okay, so she can testify about the home
18 evaluation of Mr. Manzanares.

19 MS. REYES: Right.

20 MR. JENKINS: -- but hasn't done any of Ms. Terry, and
21 they're there. She's there.

22 THE COURT: Okay.

23 MR. REYES: Your Honor, and I --

24 MR. JENKINS: I don't think --

25 MR. REYES: If the Court recalls my client's testimony,

1 I asked if he had made efforts to contact --

2 THE COURT: Yes, I do.

3 MS. REYES: -- her, and he said --

4 THE COURT: He did --

5 MS. REYES: -- extreme efforts.

6 THE COURT: -- and she was not responsive.

7 MS. REYES: So he -- he was requesting, you know, her
8 assistance in this. I think that if Ms. Terry wanted to have
9 Ms. Burgos come and view her living situation, et cetera, she
10 could have made the same effort. So --

11 THE COURT: Well, let's -- let's not make argument now.
12 Let's just --

13 MS. REYES: Right, okay.

14 THE COURT: -- get the information brought out I need
15 to hear on the facts. So is that who you intend to call --

16 MS. REYES: If we could try calling her --

17 THE COURT: -- right now, or do you want to put your
18 client --

19 MS. REYES: -- by phone?

20 THE COURT: You tell me who you want.

21 MS. REYES: Your Honor, the reason I bring that up
22 now, my only concern is if tomorrow at approximately sometime
23 after 3, it appears that we've been able to get through all the
24 other witnesses, I don't want to be in a situation where we're
25 attempting to argue the case, but still have a witness kind of

1 on hold. So I think it would be better to contact her right
2 now.

3 THE COURT: It's your call. All right.

4 MS. REYES: I would like to now.

5 THE COURT: Give us the number.

6 COURT CLERK: Who is it?

7 MS. REYES: Vivian Burgos. She's at the end of the
8 list there, and I believe there's a cell phone number for her.
9 We could try that first, if you don't mind.

10 (Court clerk attempting to contact Vivian Burgos)

11 COURT CLERK: Not available.

12 MS. REYES: Okay.

13 THE COURT: All right, thank you, Pat.

14 MS. REYES: Your Honor, I apologize. I --

15 THE COURT: It's not your fault.

16 MS. REYES: -- will have to make some efforts to see if
17 we can have her available tomorrow sometime, then.

18 THE COURT: Okay. Who else would you like to call?

19 MR. REYES: Your Honor, I'll go ahead and call my
20 client, then.

21 THE COURT: All right.

22 MR. REYES: Robert Manzanares.

23 THE COURT: If you'll please retake the stand. You're
24 still under oath.

25 ///

1 ROBERT MANZANARES,

2 having been previously sworn,

3 retakes the witness stand,

4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. REYES:

7 Q. Mr. Manzanares, in getting into the custody aspect

8 of this case, I'm going to maybe ask you a few questions.

9 Hopefully they're not redundant, but if I could just touch

10 briefly on the fact that you are desirous of having custody

11 of your daughter; is that true?

12 A. Yes, absolutely.

13 Q. Okay, and have you been consistent in your position

14 since you learned of the -- of the conception of your daughter?

15 A. Absolutely.

16 Q. Have you ever indicated to Carrie Terry or other

17 individuals anything different than your desire to raise your

18 child?

19 A. No.

20 Q. Okay. Do you have an environment -- well, let's step

21 back. What type of living arrangements do you currently have

22 in place?

23 A. Yes, I currently live in a town home, apartment home

24 in a gated community in Highlands Ranch, Colorado. It is

25 an 1,100 square foot one-bedroom apartment. It's a gated

1 community. It's a very family oriented community, which was
2 one of my reasons for moving Carrie and her daughter and myself
3 out to this area, was because of the family oriented and the --
4 just the -- it's a very beautiful area.

5 Q. Okay, and do you have accommodations ready to be able
6 to care for your daughter?

7 A. Yes, I do.

8 Q. What does that consist of?

9 A. I have a bassinet, I have a crib, I have a car seat,
10 I have a stroller, I have clothes, I have everything needed,
11 except for the formula she's on. I would hope that I would be
12 provided that; but I have everything that would require for me
13 to be a father.

14 Q. Have you taken any courses to insure that you have
15 knowledge of how to care for an infant?

16 A. Yes, I have.

17 Q. And if I can have you look at what's been marked as
18 Exhibit --

19 MS. REYES: Your Honor, and I apologize, maybe I don't
20 have this in here.

21 THE COURT: That's all right. Take --

22 MS. REYES: I might have to look for it, but --

23 THE COURT: Excuse me, can Counsel approach the bench,
24 please?

25 MS. REYES: Yes.

1 (Discussion at the bench off the record)

2 THE COURT: We're going to take a short recess, and you
3 can go ahead and step right down, all right?

4 (Recess taken)

5 COURT BAILIFF: Please remain seated. Third District
6 Court is back in session.

7 THE COURT: Are we back on the record?

8 COURT CLERK: Yes.

9 THE COURT: Thank you. We're back on the record.
10 All Counsel has had a conference with Court in chambers, and
11 it's been decided that what we'll do is hold and not proceed
12 forward with the evidentiary hearing on the best interests of
13 the child, even though the decision could possibly be made
14 in a two step; but it's tentatively what the Court considers
15 that further overnight be prepared to address the statutes and
16 arguments concerning the issues of consent, and whether or not
17 consent is or is not required. Anything else Counsel wants to
18 put on to expand, clarify, modify what's been outlined?

19 MR. JENKINS: I think that covers it, your Honor.
20 We'll be ready at 9 in the morning.

21 THE COURT: Counsel, anything there?

22 MS. REYES: No, your Honor, other than if the Court
23 -- I'm assuming that the Court's not going to be prepared or
24 inclined to issue a ruling on consent as early as tomorrow; but
25 if the Court was, we could give argument in the morning, if the

1 Court defer for a ruling and then come out at a later time, and
2 then I believe that since both the parties are here --

3 THE COURT: I think -- I think it's important to make
4 sure that the decision that is being made and the reasons
5 therefore are documented in writing --

6 MS. REYES: Okay.

7 THE COURT: -- for everybody's benefit.

8 MS. REYES: Then, your Honor, all I would ask is that
9 if sometime tomorrow, I'll bring my calendar, if the Court
10 would be available to get the parties and -- not the parties,
11 necessarily, but some dates with regard to when that other
12 hearing may be set, if in fact the Court decides that consent
13 is necessary.

14 THE COURT: We'll cross that bridge tomorrow.

15 MS. REYES: Sure, thank you.

16 THE COURT: All right. Thank you both for your effort.
17 I appreciate it.

18 (Hearing concluded)

REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

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

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

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

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

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

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

Wendy Haws
Certified Court Transcriber

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

My commission expires:
February 24, 2012

Beverly Lowe
NOTARY PUBLIC
Residing in Utah County