

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401 Telephone: (303) 271-6130	
In re the Marriage of:	
Petitioner:	CHRISTY HARRINGTON, n/k/a CHRISTY RYAN
and	
Respondent:	SEAN L. HARRINGTON
Sean Harrington, <i>Pro Se</i> 197M Boston Post Road, West Suite #151 Marlborough, MA 01752	↑ COURT USE ONLY ↑ Case Number: 99DR3717 Jefferson County C.S.E.U. No. 30-192795-44-8A
RESPONDENT'S REPLY IN SUPPORT OF HIS MOTION TO PERMIT TESTIMONY BY TELEPHONE	

The Respondent, above named, pursuant to C.R.C.P. §§ 7 & 43(i), submits his Reply in support of his Motion to Permit Testimony by Telephone. As grounds for the within motion, the Respondent states:

1. (a). Attorney Wilson, counsel of record for the Petitioner, above named, states in Paragraph 1 of her responsive pleading (hereinafter "Response") that she, "has requested over and over that any and all correspondence between she [sic] and the father be handled by facsimile only . . . However, the father . . . has left a number of lengthy, rambling messages on the mother's counsel's voice mail . . . [and] also sent an e-mail to the mother's counsel." As inferred by Wilson's statement, she has refused to accept voice-mails or e-mails as a legitimate form of communication. In fact, she replied to a request to receive service of the § 107 hearing with the following reply, attached hereto and made part hereof by reference as Exhibit A:

I do not accept e-mails from you. Send me a fax or a letter. Do not use this e-mail address again.

- (b). Previously, on more than one occasion, Ms. Wilson has asserted that the Rule 121 "duty to confer with opposing counsel" does not apply to her because Mr. Harrington is not "counsel." (*See, e.g.,* Ryan and Wilson's Answer Brief, filed July 1st 2004 in Court of Appeals Case No. 03CA1825 (also filed with this Court) *Id.* at p. 7, lines 21 - 23). Wilson's statutory [mis]interpretation clearly leads to an "absurd result," because the duty to confer was intended by the General Assembly to apply to all litigants, for the same reasons that requirements of an attorney are also made of *pro se* litigants (as Ms. Wilson frequently points out: *see, e.g.,* Ryan & Wilson's "Response to Appellant's Motion for Declaratory Relief . . . & Motion for Attorney Fees, Damages & Costs," filed on or about Sept. 3rd in Court of Appeals case No. 04CA1161 ("The father, like any other appellant, must follow the Colo-

rado Appellate Rules.” *Id.* at para. 5; “While the father has chosen to represent himself *pro se*, the father is charged with the knowledge of an attorney” *Id.* at para. 7). Ms. Wilson (who is also licensed to practice in Texas), must be formally reminded that, “as officers of the court, attorneys owe a duty to the court that far exceeds that of lay citizens.” *Howell v. State Bar of Tex.*, 843 F.2d 205, 207 (5th Cir. 1988), because she appears to believe that the Rules of civil procedure apply to everyone except attorneys.

(c). While Ms. Wilson complains that neither she nor her client have [yet] been served with the § 107 citation, she has refused to respond to Respondent’s inquiry as to whether Wilson has been appointed to receive process for her client or waive service *vel non*. Instead, she has made unreasonable demands on what form of communication she will accept. Rule 121 is not so circumscribed and Ms. Wilson has no authority to make such demands. Absent an Order of this court to the contrary, Respondent will attempt to confer with Petitioner’s counsel in good faith through ordinary and generally accepted methods (telephone, fax, email & hand delivery). If her client is prejudiced by the failure of Ms. Wilson and Mr. Harrington to effectively communicate, it is solely a direct and proximate result of Ms. Wilson’s contumacious conduct.

(d). Ryan & Wilson incorrectly assert in Paragraph 1 of their Response that, because of appellate pendency, “the Court has lost jurisdiction over this matter” (relying on *Hylton v. City of Colorado Springs*). However, a trial court retains jurisdiction over proceedings that are either authorized by statute or rule or do not involve a challenge to the propriety of the judgment on appeal, which includes contempt hearings. *See, e.g.*, *In re Marriage of McCue*, 645 P.2d 854 (Colo. App. 1982) (recognizing that the trial court is not precluded from enforcing its judgment through contempt authority, even though an appeal is pending); *Schnier v. District Court*, 696 P.2d 264 (Colo. 1985) (same)). In fact, a trial court always retains jurisdiction to aid in the appeal and to maintain the *status quo*. *Hawaii Housing Auth. v. Midkiff*, 463 U.S. 1323, 1324 (1983) (“it is well settled that a court retains the power to grant injunctive relief to a party to preserve the status quo during the pendency of an appeal”). Wilson correctly observes that Judge, “Tidball entered an order on August 30, 2004 that the Court would not rule on any Motions until the Court is revested with jurisdiction.” However, this order has no effect, whatsoever, over the instant matter, because a trial court has no legislative or constitutional authority to waive or confer jurisdiction from or upon itself. *See People v. Proffitt*, 865 P.2d 929 (Colo. App. 1993) (Jurisdiction is created only by constitution or statute); *People ex rel. Garner v. Garner*, 33 P.3d 1239 (Colo. App. 2001) (“[S]ubject matter jurisdiction cannot be waived”); *Old Wayne Mut. L. Assoc. v. McDonough*, 204 U. S. 8, 27 S. Ct. 236 (1907) (“A court cannot confer jurisdiction where none existed”).

2. Whether Ryan presently has knowledge of the contempt citation *vel non*, has no bearing on this Court’s decision to grant the relief sought by Respondent under Rule 43(i). Ryan’s alleged present lack of knowledge of this matter is a direct and proximate result of her attorney’s recalcitrance. Under the Rules, Respondent has up until 20 days prior to the hearing date to personally serve Ryan, if she chooses not to waive service.

3. No reply to Paragraph 3 of the Petitioner’s Response is necessary.

4. (a). Ryan & Wilson state, “Based on the father’s ramblings, it appears that the father may have filed a Motion for Contempt.” Ryan’s counsel of record, Madeline Wilson, was properly served by Respondent pursuant to C.R.C.P. §5 (b) and Respondent request this court to take judicial notice of the three §107 Motions, filed on or about June 17th, June 30th and July 12th 2004 (at the direction of this court by its order dated October 29th 2003).

(b). Ryan & Wilson now assert that the mother has a right to “face her accuser.” Apparently, she was unaware of the Confrontation Clause of the Constitution when she alleged, *inter alia*, sexual abuse and child neglect and requested an forthwith hearing on June 30th 2003, which was held on July 2nd, 2003, and in, which Mr. Harrington received his first notice of said [telephone] hearing at 8:34 p.m. the night before and in, which he received a copy of the motion/petition by fax transmission 12 minutes before the hearing began, all of the foregoing, which occurred ten days after his attorney of three years had withdrawn from the case. Although contempt proceedings are generally available to enforce a judgment determining the property rights of the parties to a divorce proceeding (*See, e.g., Harvey v. Harvey*, 153 Colo. 15, 384 P.2d 265 (1963); *Gonzales v. District Court*, 629 P.2d 1074 (Colo. 1981)), they equally serve to restore or preserve the “dignity of the court.” *Lobb v. Hodges*, 641 P.2d 310 (Colo. App. 1982). The matter of contempt is primarily between the court and Ms. Ryan. Ryan is directed to show cause to the Court (not Harrington), if any, that she may have, for not being subject to the contempt authority of the court for her failure to comply with the Court’s orders. If she has cause, such as proof that she did comply or had already complied with those orders, then she may seek to admit that as evidence. Of particular note is that she did not respond to the three Motions for Contempt Citation filed in June or July of 2004 (thus, did not deny the charges) nor has she attached any such evidence as an exhibit to the instant Response nor has she even once denied that she has violated the orders of the court.

(c). Ryan & Wilson urge this court, in Paragraph 4 of their response, that, “it is imperative that the father’s request for telephone testimony be denied.” Little support is offered for their request and no legal authority. Conversely, Rule 43(i) specifically authorizes the relief sought by Respondent for precisely the situation that he is now in –that he lives out of state and would not needlessly incur tremendous expense to travel to Colorado and accommodations but for the wanton violation of this Court’s orders by the Petitioner and her counsel. Respondent Harrington provided numerous opportunities to Ryan to comply with the tax exemption order by providing Wilson with copies of the IRS Form 8332 (in three separate mailings spanning 18 months) and Ryan has had since November of 2001 (three years) to comply with this Court’s November 6th, 2001 order to take co-parenting after divorce classes and therapy. Harrington has complained about the latter issue to this Court at the hearing on July 2nd and in a post-trial motion (other than the Motion for Contempt) –therefore, both Ryan and Wilson cannot raise a laches defense or claim that they were not on notice or had simply forgotten about that order. In fact, they even argued in their Reply brief to the Court of Appeals in case No. 03CA1825 (filed July 1st of this year) that Ryan, “had not yet had the time to schedule a parenting class” *Id.* at p. 4, line 4. Ryan has no one but herself to blame for any inconvenience, embarrassment or prejudice that she may now suffer as a result of her choices. Ryan should not be allowed to distribute this inconvenience to others, including Mr. Harrington, who has already been significantly emotionally and financially aggrieved by Ryan & Wilson’s contemptuous conduct. (*Cf. Manning v. Manning*, 136 Colo. 380, 317 P.2d 329 (1957) (Where one desires in good faith the deposition of a party living in another state before trial, he should have it, but not at a time or place

involving the expense of a cross-country trip when it is shown that the nonresident party is without funds for the expense of such journey and a deposition taken shortly before the trial, which the nonresident party agrees to, will adequately serve the ends of justice)).

5. Ryan & Wilson, in Paragraph 5 of their Response, deny that Respondent is a person with a qualifying disability under the Americans with Disabilities Act on the basis of lack of knowledge of the same. Further, they allege that Mr. Harrington has, himself, denied having a mental illness. They offer no citations to the Record in support of their assertion. Whether Mr. Harrington has previously admitted or denied having a disability, as a matter of law, matters not. The Americans with Disabilities Act applies to persons who have been *regarded as* having a disability (*See generally* 42 U.S.C. 12102(2)). At all times material, Harrington has been regarded as disabled by this Court and by Ryan & Wilson and, which disability is fairly supported by the record. For example, on July 2nd 2003, Judge Tidball terminated Harrington's parenting time and accepted Ryan and Wilson's speculative notions of future harm, without requiring expert witness testimony, stating: "The evidence also before the Court is that the respondent has testified, and previously testified, and there's been evidence before the Court that the respondent has been under the care of a psychiatrist, that he has been diagnosed with bipolar, and he has been placed on medications. . . .The petitioner has taken the position that she has concerns that he's not taking his medication on a regular basis, and that that affects his ability to communicate with her and to parent the minor child."¹ Ryan and Wilson have alleged, consistently, for the past five years that Harrington is potentially homicidal when he does not take his medications² and they have stated, in multiple sworn affidavits and

¹ Reproduction and raising (parenting) children is a major life activity under the ADA.

² *See, e.g.*, Ryan & Wilson's July 1st 2004 Answer Brief to the Colorado Court of Appeals in Case No. 03CA1825: "[T]he father . . . appeared to have discontinued his medication for his well documented mental illness(es). . . the father's mental illness was affecting the child . . . The mother was very concerned that the father had discontinued his medication for his bipolar condition . . . the father has been diagnosed as bi-polar and he has been prescribed medication for that condition . . . the father's mental illness apparently greatly impairs his judgment . . . There is evidence the father became paranoid and potentially homicidal when he does not take medication. . . it is clearly not in the child's best interests to have parenting time with an unmedicated mentally ill father . . . To infer that his mental illness is not to be considered is simply absurd . . . The totality of the evidence is clear that the father suffers from a mental illness that, when uncontrolled, results in dangerous behavior . . . The record is filled with evidence of the father's mental illness(es)"; Ryan & Wilson's "Emergency Verified Motion to Return Child to Mother or Motion to Restrict Parental Contact" June 30th 2003 (Jefferson County Case No. 99DR3717): "The mother believes the father has been diagnosed in the past as bi-polar and is currently prescribed medication to deal with this condition. . . . The mother is very concerned that the father has discontinued his medication . . . The mother believes that the father became dangerous in the past when he discontinued his medication"; Aff. of Christy Ryan in support of § 27-10-106 Petition for Mental Health hold, July 7th 2000 (Jefferson County Case No. 00MH243): "Mr. Harrington has had several hospitalizations at West Pines at Lutheran Medical Center and St. Joseph's PsychCenter due to mental illness. He has been diagnosed with Bipolar Disorder, with psychotic features, and Narcissistic Personality Disorder. He has also has a past diagnosis of schizophrenia. Mr. Harrington has been prescribed anti-psychotic and mood stabilizing medications, which he has refused to take. Consequently, he has deteriorated. . . He has many weapons and has threatened to use them on anyone he

in open court that they “suspect,” that he was [at those times] not taking medications. They have argued that Harrington is unable to care for his daughter.³ Ryan has testified that Harrington is unable to make responsible decisions regarding his own care, cannot remain employed and that he is chronically suicidal. Wilson has been quoted as stating to persons unconnected to the proceedings that Harrington, “has a few screws loose,” and is, “deranged.” Therefore, Ryan & Wilson’s statement that, “[t]he mother is not sure what disability the father is claiming that he alleges qualifies him under the Americans with Disabilities Act,” is disingenuous and transparent and does not evidence good lawyering or zealous advocacy, but rather ethical bankruptcy.

6. In Paragraph 6 of the Response, Wilson, who is an attorney licensed to practice law in the State of Colorado, denies sufficient knowledge to admit or deny that, “The Americans with Disabilities Act and Judicial Directive 04-07 both require entities providing public services, specifically the court, to provide reasonable accommodations to qualifying persons with disabilities.” Wilson’s recalcitrance to look up legal authorities in the state where she practices does not constitute an acceptable basis for the denial of an allegation. Respondent respectfully requests that the denial be stricken.

7. No response is required to Paragraph 7 of the Response.

8. Harrington incorporates by reference his allegations from Paragraph 4(a) - (c), hereinabove, hereto, in reply to the duplicative allegations of Paragraph 8 of the Response.

9. In Paragraph 9 of the Response, Ryan and Wilson deny that, “Respondent makes his within request for presentation of testimony by telephone within the time prescribed by C.R.C.P. § 43(i). Further, Respondent states that copies of all documents or reports, which may be used or referred to in such testimony will be made for inspection at least twenty-one (21) days prior to hearing.” (see Respondent’s Motion at para. 9). Ryan & Wilson further allege that, “[t]he mother’s counsel has yet to receive ANY documentation regarding this alleged hearing.” (emphasis in the original). The Rules allow Harrington to serve Ryan up to twenty days prior to the hearing. Personal service is not a condition precedent for the relief requested within and Ryan & Wilson have failed to cite any legal authority to the contrary. Ryan & Wilson are objecting to a situation that is a direct and proximate result of Wilson’s contumacious conduct and refusal to acknowledge or respond to Harrington’s *bona fide* attempts to settle this matter out of court.

10. Ryan & Wilson assertions in Paragraph 10 of their Response that this court is without jurisdiction to do anything because of an appellate pendency is without basis in law and Respondent incorporates by reference herein the allegations in Paragraph 1(d) of the within Reply, hereto. This Court does, indeed, lack jurisdiction to do anything, but only because of the undecided recusal motion filed by Re-

perceives as a threat.”; Verification in Support of Civil Restraining Order, Dec. 9th, 1999 (Jefferson County Case No. 99C15402): “History of mental illness (untreated)”

³ Ryan & Wilson’s July 1st 2004 Answer Brief to the Colorado Court of Appeals in Case No. 03CA1825: ““it is clearly not in the best interests to have parenting time with an unmedicated mentally ill father.” *Id.* at p. 18, lines 14 - 15

spondent in August of 2004. Once that matter has been decided, this Court will have jurisdiction to hold the contempt hearing.

II. In Paragraph II of the Response, Ryan & Wilson allege that, “[t]he saddest part is that this is not about the child that father has (by his own action and inaction) failed to see for approximately 18 months, but about vengeance and winning.” Apparently, Ryan & Wilson believe that this Court has a very short memory. Mr. Harrington cannot and has not seen his daughter in 18 months because Christy Ryan (no one else) petitioned this Court under § 14-10-129(4) to end all parenting time, indefinitely. Until that action, which Mr. Harrington was denied both substantive and procedural due process (and adequate notice as required by C.R.C.P. § 16(g)), Harrington had fully exercised his parenting time by traveling to Colorado frequently and by calling and speaking with his daughter almost daily by telephone. Since that time, Mr. Harrington has strenuously pursued his right of appeal, including a motion for limited remand to modify the current restriction (which Judge Tidball stated was temporary).⁴ Mr. Harrington did not petition this Court to curtail his parenting time or terminate his parental rights. Ryan has a well established and documented campaign since December 1999 of alienating Mr. Harrington and forcing him to obtain the assistance of police in enforcing the parenting time orders —so well established, in fact, that Mr. Harrington wrote to T.J. Price, Ed.D., his daughter’s then-therapist, on December 17th 2002 and predicted, six months in advance, that Ryan would find some way to derail, interfere with or prevent Harrington’s exercise of parenting time for the summer of 2003:

Most recently ... [Christy] has been pushing for, “More frequent, consistent, but shorter ‘visits,’ ” which she knows is not practical ... and she has also indicated that she has no desire or intention of honoring our Stipulated Agreement ... it is now clear to me that...Christy [has] autonomously determined that Shelby’s contact with me is wholly negative and [is] **already trying to build up a case to prevent Shelby from spending this next summer here**, as has already [been arranged] per the Court Order. Christy has already indicated to me that she plans to “reevaluate that conclusion” [of summer parenting time in the Order]. [emphasis added]

The truth is, the reason Mr. Harrington has not seen or communicated with his daughter in any form, whatsoever, is solely because of a conspiracy between Ryan and Wilson to conceal the child. Since July 2nd of 2003, Ms. Wilson has ignored and refused to reply to Mr. Harrington’s written requests for information regarding the address, phone, contact information, school information and medical records of the minor child in contravention of C.R.S. § 14-10-128.8. Wilson’s official explanation (in correspondence dated June 1st, 2004, was: “We await the Special Advocate’s report regarding his recommendations regarding contact information for Christy and Shelby.” Wilson thereby implied that the decision to provide the requested contact information or restore contact of some form belonged to the Special Advocate, while the case was on appeal. This is an unlikely “excuse,” because it is well settled and known to any competent family law attorney that the court may not delegate this decisional function to third parties. *In re Marriage of McNamara*, 962 P.2d (Colo. App. 1998)); *see also In re Elmer*, 936

⁴ Excerpt from the transcript of proceedings, July 2nd 2003: “What I would like to see happen is, that you, Mr. Harrington, over the next few weeks, locate a therapist, obtain a place to live with another bedroom, if you desire to do so, provide information in an acceptable and admissible form to the Court, regarding your treatment by a psychiatrist and the fact that you are taking the medication prescribed on a regular basis. If all of those things were done, I would like to have Shelby go back and spend another couple weeks with her father.”

P.2d 617 (Colo. App. 1997) (trial court had not authority to delegate to child psychiatrist the decision when overnight visitation could begin to occur); *In re D.R. V-A*, 976 P.2d 881 (Colo. App. 1999) (It was improper for trial court to delegate decisions regarding parenting time to the therapist, which constitutes an improper delegation of the court's authority.); *N.A.H. v. S.L.S.*, 9 P.3d 354, 359 (Colo. 2000) (“*Parenting time*,” is subject only to the, “determination that the trial judge must make.”) Ultimately, whether Mr. Harrington has seen his daughter in 18 months *vel non*, is immaterial to the within request for relief.

12. In Paragraph 12 of the Response, Ryan & Wilson allege that the “Show Cause Motion . . . is frivolous and vexatious.” The Court should take judicial notice that Ryan & Wilson did not respond to any of the three motions filed in June and July of 2004. As such, the allegations contained therein are deemed admitted (*See generally* C.R.C.P. 8§(d) Effect of Failure to Deny. (“Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading.”); C.R.C.P. §121, District Court Practices, Determinations of Motions (“...Failure of a responding party to file a responsive brief may be considered a confession of the motion.”); *Duke v. Pickett*, 168 Colo. 215, 451 P.2d 288 (1969) (“A party waives all defenses and objections which he does not present in his answer”); *Tovrea v. Denver & Rio Grande Western R.R. Co.*, 693 P.2d 1016 (Colo. App. 1984) (“*If the issue raised by the pleadings is not objected to, the parties’ consent is implied*”). It is now too late for Ryan & Wilson to argue that the Motions are somehow frivolous and vexatious and, further, they have provided no citation to the record or cogent argument supporting such an assertion. A pleading is considered frivolous only if the proponent can present no rational argument based on the evidence or law in support of a proponent's claim or defense, or the request for relief is prosecuted for the sole purpose of harassment or delay. *Mission Denver Co. v. Pierson*, 674 P.2d 363 (Colo. 1984). Ryan & Wilson have made no *prima facie* showing that Harrington's motions had not basis in fact or law or that the purpose behind the motions was harassment or delay.

13. Harrington has no knowledge of whether Ryan, “continues to incur attorney fees for required responses to the father's never-ending stream of unnecessary pleadings,” and, therefore, denies the same. (Harrington also denies that his pleadings are unnecessary or inept, as alleged by attorney Wilson). If this is true, these expenses could have been easily avoided by Ryan by complying with the orders of this Court sometime within the past three years. Any financial consequences that she may now suffer are solely the direct and proximate result of her decision to defy the orders. Consequently, Mr. Harrington respectfully requests that Ryan & Wilson's unfounded request for attorney fees, stated in Paragraphs 13 - 15 of their Response, be stricken.

WHEREFORE, the Respondent requests an Order of this Court permitting Respondent, Sean Harrington, to testify by telephone at time of hearing relative to this action as more fully set forth hereinabove, once the issue of the pending motion for recusal has been resolved by this Court.

Respectfully submitted,


Sean Harrington

CERTIFICATE OF MAILING

I hereby certify that on the 16th day of December, 2004, I mailed a true and accurate copy of the foregoing motion via pre-paid first class mail addressed as follows:

Jefferson County District Court
100 Jefferson County Parkway
Golden, CO 80401

and by facsimile to:

Law Office of Madeline Wilson
303-321-3196

