

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401 Telephone: (303) 271-6130	▲ COURT USE ONLY ▲ <hr/> trial court case No. 99 DR 3717 Court of Appeals No. 07CA0379
In re the Marriage of: Petitioner: CHRISTY RYAN and Respondent: SEAN L. HARRINGTON	
Sean L Harrington P.O. Box 351855 Westminster, CO 80035	
FATHER’S SPECIAL APPEARANCE OBJECTING TO EXERCISE OF JURISDICTION (REGARDING CHILD CUSTODY) AND MOTION TO STRIKE	

A fully hyperlinked copy of this pleading is available at:

<http://www.knowyourcourts.com/Pleadings%20&%20Orders/99DR3717/2007-07-11-fathersSpecialAppearance.pdf>

I, Sean Harrington, Respondent, specially appearing, object to the exercise of jurisdiction by this Court in the matter of custody of Shelby Harrington, a minor child. In support thereof, I say:

1. My daughter, with the substantial aid and assistance of mother's attorney, Madeline Wilson, has been secreted in Decatur, Texas since December of 2004. Mother fled the State of Colorado without Notice to me or this Court, depriving me of knowledge of the whereabouts of my daughter, Shelby, and depriving me of telephonic contact with her, in violation of ¶ 1.10 and 1.14 of this Court’s Nov. 6, 2001 stipulated Order.¹

2. Both Ryan and Wilson jointly and severally deprived me of information regarding the medical, dental and school records of Shelby, to which I am entitled under Section 14-10-123.8. Wilson actively concealed their whereabouts. For example, she filed a responsive pleading with this Court on Dec. 8th 2004, claiming in ¶ 8 that, “mother will be out of town on February 1st, 2005” (the date of the contempt hearing)) and declined to answer my written requests for records access and whereabouts sent to Wilson by certified mail on 6/10/2004, 7/22/2004, 9/01/2004, 5/27/2005 and 8/02/2005. See *Hall v. Hall-Stradley*, 13 Fam. L. Rep. (BNA) 1108 (Denver District Court, Case NO 84-CV-2865) (\$200K jury award against attorney for providing substantial encouragement and assistance in the concealment of children from *pro se* non-custodial father for several months; \$60K against custodial mother; and \$60K against custodial mother’s new husband).

¹ I request that this Court take judicial notice of my April 6th 2005 Verified Motion for Contempt Citation (ICON even ID # [416](#)), alleging that mother fled the state without notice to me or the Court. This Court Ordered two contempt citations on 4/18/2005 (ICON event ID # [425](#) & [426](#)).

3. The result of the actions described in the preceding two paragraphs has resulted in what is known as a “parentectomy.” See In re Marriage of Hatton, (Colo. App. [N^o 01CA2012](#), Nov. 7, 2002), which is injurious to a minor child and in contravention of public policy in Colorado.²

4. This Court has not entered any orders specifically pertaining to the custody or care of my daughter, Shelby, since July 2nd of 2003 (four years ago). Mother admits in ¶ 1 of her “Emergency” Motion that an appeal is pending, 07CA0379, which she correctly asserts is unrelated to jurisdiction over parenting time. *Id.*

5. Mother has retained two attorneys in Texas and pleaded for affirmative relief (not a “special appearance”), including a Motion for Continuance, a Motion for Substitution of Counsel; and she has twice appeared before the Texas district court.

6. Mother alleges that, “The Texas Judge is apparently attempting to assume jurisdiction over custody matters.” The Texas Judge is not attempting to assume jurisdiction; he has already assumed jurisdiction.³ Therefore, under the Uniform Child Custody Jurisdiction and Enforcement Act of 1997 (UCCJEA), this court does not have jurisdiction over any matter concerning the custody of my daughter, Shelby Harrington. In support of her motion, Mother relies on the Parental Kidnapping Prevention Act; the Full Faith and Credit Clause; the UCCJA (of 1967); and intentionally false misrepresentations.

² § 14-10-104.5, C.R.S. 2006 (General Assembly “recognizes that, in most cases, it is in the best interests of the children of the marriage to have a relationship with both parents and that, in most cases, it is the parents’ right to have a relationship with their children”); § 14-10-124(1), C.R.S. 2006 (General Assembly declares that “it is in the best interests of all parties to encourage frequent and continuing contact between each parent and the minor children of the marriage after the parents have separated or dissolved their marriage”); see also Leona M. Kopetski, *IDENTIFYING CASES OF PARENT ALIENATION SYNDROME*, 27 Colo. Law. 65, 68 (Feb. 1998); Janet R. Johnston, *RECENT RESEARCH AND SOCIAL POLICY IMPLICATIONS FOR THE ALIENATED CHILD*, 38 Fam. L.Q. 757, 775 (Winter 2005) (“clear court orders that affirm parental rights and restore an appropriate access plan” are helpful while, what hurts, among other things, are long delays where the child has no contact with the parent and “parentectomies,” that is, abruptly severing the child’s relationship with the aligned parent).

³ The district court of the 271st Judicial District of Texas has exercised jurisdiction under Section 201(a) of the [Uniform Child Custody Jurisdiction Enforcement Act of 1997](#) and under the corresponding Tex.Fam.Code 152.201 (1), (2) and (4). A copy of the relevant pages of the Texas Family Code is attached hereto and made part hereof by reference as, “[Attachment A](#).” The Court’s order (assuming jurisdiction) was issued from the bench. I have paid a court reporter to obtain a copy thereof and have moved the Texas court to reduce the ruling to a written Order. All other matters, other than jurisdiction, to which mother stipulated to in the Texas court are contained on a handwritten stipulation bearing mother’s signature, attached hereto and made part hereof by reference as, “[Attachment B](#).”

7. Contrary to mother's false allegation contained in ¶ 5 of her Motion, I have denied that I am a resident of Colorado. In fact, both Christy Ryan and her attorney (Madeline Wilson) are defendants in civil action 05-cv-01858 in the U.S. District Court for the District of Colorado, which is now on appeal to the Tenth Circuit. In my Second Amended Complaint, served on both parties on December 21, 2005, I stated, "Father is not now and has not been a legal resident of Colorado at any time since January of 2001. . . . Defendant Ryan is now domiciled in Texas." *Id.* ¶ 20. A copy of this page from the Second Amended Complaint is attached hereto and made part hereof by reference as [Attachment C](#). Therefore, because neither father nor mother live in Colorado, mother's reliance on the PKPA is misplaced.

8. The UCCJA of 1967, upon which mother relies in para. 14 of her Motion for "promot[ing] the best interests of the child, whose custody is at issue," was **repealed and replaced with the UCCJEA of 1997**. The UCCJEA of 1997 specifically provides that "The UCCJEA eliminates the term "best interests" in order to clearly distinguish between the jurisdictional standards and the substantive standards relating to custody and visitation of children":

The jurisdictional scheme of the UCCJA was designed to promote the best interests of the children whose custody was at issue by discouraging parental abduction and providing that, in general, **the State with the closest connections to**, and the most evidence regarding, **a child should decide that child's custody**. The "best interest" language in the jurisdictional sections of the UCCJA was not intended to be an invitation to address the merits of the custody dispute in the jurisdictional determination or to otherwise provide that "best interests" considerations should override jurisdictional determinations or provide an additional jurisdictional basis. **The UCCJEA eliminates the term "best interests" in order to clearly distinguish between the jurisdictional standards and the substantive standards relating to custody and visitation of children.**

Id. at Prefatory Note N^o 5. Mother's reliance on the now-repealed UCCJA of 1967 is, therefore, mistaken.

9. The Full Faith and Credit Clause (28 U.S.C. § 1738A) requires this Court to recognize and respect the decision of the district court in Texas, which has already been made. The decision whether to exercise jurisdiction in this matter does not belong to Colorado; it belongs to Texas. Judge Angela Arkin, regarded in Colorado as an expert on this subject, explained in *INTERSTATE FAMILY LAW JURISDICTION: SIMPLIFYING COMPLEX QUESTIONS*, 31 Colo.Law. 9, 77 (2002):

The jurisdictional concept of the UCCJEA20 and PKPA21 is "child-state" jurisdiction. Such child-state jurisdiction involves only jurisdiction over the subject

matter (the child) and usually arises after the child has resided in the "home state" for more than six months. . . . "Home state" is specifically designated as the priority basis for jurisdiction. The home state has the exclusive right to choose whether or not to exercise jurisdiction, before any other state has the option. Bases for jurisdiction other than "home state" may be used only after initial action by the home state declining jurisdiction, or if the child has no home state, as defined under the UCCJEA.

* * *

If all parties leave the issuing state, the jurisdiction to modify any particular issue will be different, depending on the applicable statutes. There are certain key rules to keep in mind. First, in custody cases, if any party or child still lives in the state that issued the order, only the court in that state has the power to decide whether or not to exercise jurisdiction. Second, in support cases, if any party or child still lives in the state that issued the order, only the parties have the power to transfer jurisdiction.

Ibid. As a courtesy for the Court, I have attached a copy of Judge Arkin's treatise, which marked as, "[Attachment D](#)."

10. Because Shelby has lived in Texas since 2004, much longer than six months, her home state is Texas. Because I left Colorado in December of 2000 and mother fled in December of 2004, neither party nor the minor child lives in Colorado and the decision to exercise jurisdiction or not belongs to the Texas court and, as noted above, the Texas court has ruled on the matter.

11. Because this Court lacks jurisdiction under the UCCJEA of 1997 (which prohibits contemporaneous, parallel jurisdiction over custody determination), this Court must deny mother's "Emergency Motion."

12. If this Court elects to engage in communication with the Texas court, I request that my attorney of record, Thomas O'Brien,⁴ be permitted to participate pursuant to section 110 (b) of the UCCJEA and that a record of the communication be made, as mandated by section 110 (d)-(e). I further request that a judicial officer other than Judge Tidball participate because, there is an ongoing appeal concerning her authority over this case and,⁵ because the Court of Appeals ruled in *Colo. State Bd. of Med. Exam'rs v. Lopez-Samayoa*, that, when the substance of an appellant's appeal challenges the authority that trial judge has over the case, any actions taken during appellate pendency falls outside of the limited circumstances where the trial court retains jurisdiction. 887 P.2d 8, 15 (Colo. 1994).

⁴ Two Turtle Creek Village, Suite 1800, 3838 Oak Lawn Avenue, Dallas, TX ph: 214-443-0062; fax: 214-443-0063

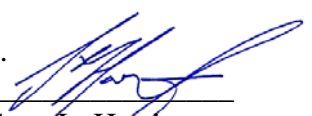
⁵ I have objected to the exercise of jurisdiction by Judge Tidball for reason of conflict-of-interest. I do not intend to waive that objection by the filing of the within Special Appearance. I request that this Court take judicial notice of my [January 26 Special Appearance](#) and my [May 07 Special Appearances](#) in Objection to the Exercise of Jurisdiction by this Court.

13. Moreover, because the child was removed from the jurisdiction by the unlawful, fraudulent and tortious joint and individual actions of both mother and mother's attorney, both mother and her attorney should be barred from seeking affirmative relief under the Unclean Hands Doctrine.

14. Mother's Motion, which, under oath, contains numerous statements that are disrespectful of the truth, constitutes perjury. Mother's attorney, Madeline Wilson, who has been a complaining witness in this case, as well as advocate, knowingly submitted falsified testimony and a Motion that was substantially groundless, substantially frivolous, substantially vexatious and was interposed for the purpose of cause delay. In so doing, she has violated the Rules of Professional Conduct and her obligation under Rule 11. Therefore, notwithstanding this court's lack of jurisdiction to hear the custody matter, this Court should exercise its inherent powers under C.R.C.P. Rules 11 and 12(f) to preserve the dignity of the Court and respect for the judicial process by striking the Motion prepared by mother and her attorney, sanctioning mother's attorney under Rule 11, reporting the R.P.C. violations to the Attorney Regulation Counsel and referring the perjury matter to the Jefferson County District Attorney for prosecution under § 18-8-502(1) (First Degree Perjury) (*See People v. Schupper*, 140 P.3d 293, 296 (Colo. App. 2006)); and § 18-8-306, C.R.S. 2005 (attempt to influence a public servant) (*See Schupper* at 298)).

WHEREFORE, because neither party has lived in Colorado for over 2 ½ years and because the child is a resident of Texas for the last 2 ½ years, and for the additional foregoing reasons and foregoing authorities, I respectfully objects to the exercise of jurisdiction over any custody matter by this court. I further request that the Court sanction the attorney under Rule 11 and § 13-17-102(2); refer a report to the Attorney Regulation Counsel for violating the Rules of Professional Conduct (candor toward the tribunal; meritorious claims and contentions; misconduct); and refer the matter to the District Attorney for investigation of perjury and attempt to influence a public servant..

Respectfully submitted on July 11th 2007.


Sean L. Harrington

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of July, 2007, I served a true and accurate copy of the foregoing Designation of Record by placing the same in the U.S. Mail, postage prepaid, and affixed hereto to the following:

Jefferson County District Court
Attn: Division P, Hon. Babette Norton
100 Jefferson County Parkway
Golden, CO 80401

and by facsimile to: Law Office of Madeline Wilson at: 303-321-3196

