

<b>Division 9, First Judicial District Court</b> 100 Jefferson County Parkway Golden, Colorado 80401 Telephone: (303) 271-6130	
<b>In re the Marriage of:</b>  Petitioner: <b>CHRISTY HARRINGTON,</b> <b>n/k/a    CHRISTY RYAN</b>  and  Respondent: <b>SEAN L. HARRINGTON</b>	
Sean L. Harrington P.O. Box 351855 Westminster, CO 80035	↑ <b>COURT USE ONLY</b> ↑ Case Number: 99DR3717 Jefferson County C.S.E.U. No. 30-192795-44-8A
<b>Forthwith Motion for Continuance and Motion <i>in Limine</i></b>	

Father, above named, moves this Court for an order continuing the § 13-17-103(1) hearing set for October 8, 2009 to a later date or, in the alternative, to limit the scope of the hearing, whenever it is held. As grounds for the within Motion, father states as follows:

1. Former counsel-of-record and nonparty Madeline Wilson has issued a Notice of Hearing for October 8, 2009, “for [the Court] to consider at least the factors set forth in C.R.S. § 13-17-103[1] and to receive evidence, subject to cross-examination by father, with regard to those factors.” 2/24/2009 Order on Remand at 11.
  
2. On April 9<sup>th</sup>, 2009, father filed a notice of appeal in the above captioned cause, challenging this Court’s “Order on Remand” of February 24, 2009, concerning non-parties Bill J. Fyfe and Madeline Wilson.
  
3. On September 28, 2009, father filed a Motion for Limited Remand in the Court of Appeals, seeking to revest jurisdiction to this Court to consider certain newly discovered evidence<sup>1</sup> —an out-of-state deposition testimony concerning non-party Madeline Wilson— which has been made available to father.

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<sup>1</sup> The new evidence would likely substantively alter the court’s ruling regarding non-party Madeline Wilson, which ruling is the basis of the instant appeal. The new evidence would demonstrate by clear, strong, and satisfactory proof that relief under C.R.C.P. Rule 60(b) is warranted. *See Domenco v. Southwest Properties Venture*, 914 P.2d 390 (Colo. App. 1995). The new evidence: (1) could not have been previously adduced by the exercise of reasonable diligence; (2) is material to the order appealed; and (3) would likely change the result of this Court’s order. *See S.E. Colorado Water Conservancy Dist. v. O’Neill*, 817 P.2d 500 (Colo. 1991).

4. Because a trial court loses its jurisdiction over a case when an appeal is perfected, this Court no longer has jurisdiction to rule on the issues raised in the Notice of Appeal or to reconsider new evidence relating to the Order on appeal. *See Hylton v. City of Colorado Springs*, 505 P.2d 26, 27 (Colo. App. 1973). Moreover, because the Court would necessarily need to revisit the underlying merits of father's claims, this Court does not currently have jurisdiction to consider those factors under § 13-17-103(1)<sup>2</sup> that are currently on appeal, including §§13-17-103(1)(a), (b), (c), (e), (f), and (g).<sup>3</sup>

5. Father therefore requests a continuance in this matter to afford the Court of Appeals an opportunity to rule on the Motion for Limited Remand, which, in turn, would afford this Court an opportunity to consider the new evidence and also to address all factors under § 13-17-103(1). *See Munoz v. Measner*, 2009 Colo. App. Lexis 209 (Colo. Ct. App. Feb. 19, 2009) (“We conclude a trial court should be guided by these factors . . . in determining whether to deny a claim for attorney fees”).

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<sup>2</sup> When granting an award of attorney fees, the court shall specifically set forth the reasons for said award and shall consider the following factors, among others, in determining whether to assess attorney fees and the amount of attorney fees to be assessed against any offending attorney or party:

- (a) The extent of any effort made to determine the validity of any action or claim before said action or claim was asserted;
- (b) The extent of any effort made after the commencement of an action to reduce the number of claims or defenses being asserted or to dismiss claims or defenses found not to be valid within an action;
- (c) The availability of facts to assist a party in determining the validity of a claim or defense;
- (d) The relative financial positions of the parties involved;
- (e) Whether or not the action was prosecuted or defended, in whole or in part, in bad faith;
- (f) Whether or not the issues of fact determinative of the validity of a party's claim or defense were reasonably in conflict;
- (g) The extent to which the party prevailed with respect to the amount of and number of claims in controversy;
- (h) The amount and conditions of any offer of judgment or settlement as related to the amount and conditions of the ultimate relief granted by the court.

<sup>3</sup> As part of the appeal, father challenges the trial court's assessment of father's evidence, father's motives, and the underlying legal conclusions cited in support of awarding attorney fees to Madeline Wilson, mother's former counsel-of-record, for her defense of allegations levied not against mother, but against Wilson for, among other things, aiding-and-abetting mother's concealment of the minor child; for purposefully misleading and knowingly providing false statements to this Court; and for giving false testimony under oath.

6. If the Court does not continue the hearing or if the Court of Appeals does not grant the limited remand, father requests this Court to restrict the hearing to those factors under §13-17-103(1) that are **not** within the scope of the appeal. The factors not on appeal include the “the amount of fees and costs sought and the reasonableness thereof” (See 2/24/2009 Order at 11) and §13-17-103(1)(d), (g), and (h) and Wilson’s duty-to-mitigate.


7. Request for an expedited response: In the ordinary course of motions practice under C.R.C.P. 121, § 1-15(1), opponents would have until October 13, 2009 to respond to the within Motion. The Court would then have to review the Motion and response and enter an appropriate Order, which could not occur until after the hearing is held. A decision needs to be made prior to that date, so that the hearing can be continued or, alternatively, so that the Court can prevent inappropriate testimony during the hearing.

8. Accordingly, because this Motion is submitted on an emergency basis,<sup>4</sup> father requests that this Court enter an Order on this Motion without requiring a response from non-party Wilson or, alternatively, to order non-party Wilson to respond to this Motion within three (3) business days.

9. Pursuant to Rule 121, father consulted with counsel for non-party Wilson. Opposing counsel indicated by e-mail reply that she opposes the Motion because father did not have a draft copy of the within Motion prepared at the time of conference.<sup>5</sup>

**WHEREFORE**, father requests an Order of this Court continuing the hearing until the appeals court has ruled on the Motion for Limited Remand or, in the alternative, granting the within Motion *in limine*.

Submitted this 29<sup>th</sup> day of July, 2009.

  
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Sean L. Harrington

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<sup>4</sup> Throughout the history of this case, former counsel-of-record Madeline Wilson has filed 6 “Emergency” motions, within which she requested—and the Court granted—that the relief sought be granted *ex parte* without affording father either notice or an opportunity to respond. See ICON event ID # 85 (6/16/2000), ICON event ID #115 (7/07/2000), ICON event ID #120 (7/20/2000), ICON event ID #238 (6/30/2003), ICON event ID#461 (7/03/2007).

<sup>5</sup> By e-mail dated 9/28/2009, opposing counsel Brett Huff wrote, “*I’ll have to take a look at the motions and consult with my client prior to communicating our position for your Rule 121 certification.*” However, Rule 121 does not require a moving party to provide a draft copy of his Motion to opposing counsel. Moreover, The committee comments to the Rule provide, in pertinent part, “This duty to confer is not required in all cases. Conferring would obviously not be appropriate prior to . . . a post-judgment motion.” As the within Motion relates to post-trial relief under Rule 60(b), a duty-to-confer was not here required.

## CERTIFICATE OF MAILING

I hereby certify that on the 29<sup>th</sup> day of September, 2009, a true and accurate copy of the foregoing *MOTION FOR CONTINUANCE* has been mailed, first class postage prepaid, to the following:

**First Judicial District Court**  
Division 9  
100 Jefferson County Parkway  
Golden, CO 80401

and by electronic mail to:

David H. Yun ([DYun@jalegal.com](mailto:DYun@jalegal.com));  
Brett N. Huff ([bhuff@huffandleslie.com](mailto:bhuff@huffandleslie.com)); and  
Christy C. Ryan ([cryan72@msn.com](mailto:cryan72@msn.com)).

