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STATE OF OREGON
LINN COUNTY COURT
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TRIAL COURT CLERK
BY _____

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LINN


STATE OF OREGON, ex rel)
MARC MEALEY HOLCOMB, SR.,)
Plaintiff/Relator,)
v.)
RACHEL LYNN KITTSON,)
Defendant.)

In the Matter of)
JOSALYN SKY KITTSON)
A Child,)
MARC MEALEY HOLCOMB, SR.,)
Petitioner,)
v.)
RACHEL LYNN KITTSON,)
Respondent.)

Case No. 91 0239

TRIAL MEMORANDUM

The Plaintiff/Relator, Marc Holcomb, Sr., (hereinafter referred to as "Grandfather") was awarded grandparent visitation after trial on July 18, 1991. The Defendant, Rachel Lynn Kittson, nka Steinbacher (hereinafter referred to as "Mother") bitterly opposed any visitation, supervised or unsupervised. In answering Grandfather's petition, Mother claimed that

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MML
Memorandum - Trial
8667611


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1 Grandfather was a "documented" child abuser. Mother was represented by counsel throughout the
2 proceeding and presented eight witnesses at trial to support her claim.

3 The Court issued a ruling from the bench at the conclusion of the trial. The Court
4 granted limited visitation to the child's father (whose paternity suit was tried concurrently) and
5 then stated:

6 "With respect to Mr. Holcomb, Sr., I think it is appropriate for him to have
7 grandparent visitation" Exhibit 1, pg 1. (Exhibit 1 consists of that portion of
8 the Trial Transcript containing the court's ruling on grandparent visitation,
9 Transcript pages 235-38)

10 The Court then announced a detailed visitation schedule which is encompassed in its
11 Judgment, attached hereto as Exhibit 2.

12 The Court made the following prophetic observations as it set out the visit schedule:

13 [W]e could pray for miracles and maybe in time something will happen in the
14 relationship where things will be more graceful than having in under court order....
15 Ex. 1, pg 2.

16 The only way that child is going to have anything like a normal life is if there is
17 hatchet burying and a peaceful place between all of your. It has got to be done.
18 I have talked to many people this way so many times but they go right out and
19 have the same course of conduct and that's too bad. Ex 1, pg 2-3.

20 LEGAL HISTORY

- 21 April 9, 1991 Petition for grandparent visitation filed. Mother appeared opposing any
22 visitation and alleged that Grandfather was a "documented child abuser" and
23 should not be allowed visitation with the child. Mother's appearance is
24 attached as Exhibit 3.
- 25 July 18, 1991 Trial and decision from the bench granting grandparent visitation.
- 26 September 23, 1991 Judgment entered granting grandparent visitation pursuant to a schedule.
- October 3, 1991 Contempt filed by Grandfather for denial of visitation in September, 1991.
- October 22, 1991 Mother files Notice of Appeal.
- November 20, 1991 Supplemental Affidavit alleging continued contempt filed.
- January 30, 1992 Stay of Judgment pending appeal granted subject to supervised visits by
Grandfather.
- February 13, 1992 Hearing on contempt before Judge Goode; matter taken under advisement.

- 1 October 16, 1992 Oral arguments heard by Court of Appeals.
- 2 November 12, 1992 Oregon Court of Appeals affirms the Judgment without opinion (AWOP) and releases opinion.
- 3
- 4 January 13, 1993 Order to Show Cause: Contempt served on Mother for denial of visitation following release of Appellate opinion.
- 5 January 29, 1993 Supplemental Affidavit alleging continuing contempt.
- 6 April 3, 1993 Second Supplemental Affidavit alleging continuing contempt.
- 7 April 16, 1993 Hearing on Order to Show Cause (Judge Frost); Court concludes insufficient evidence presented on Mother's knowledge of Order; proceeding dismissed.
- 8
- 9 September 21, 1993 Order to Show Cause: Contempt filed for denial of visitation rights.
- 10 September 30, 1993 Sheriff's return of Non-service.
- 11 October 19, 1993 Order to Show Cause: Contempt re-filed.
- 12 October 24, 1993 Order to Show Cause: Contempt served upon Mother.
- 13 November 17, 1993 Appearance by Mother through Ralph Bradley, Attorney at Law; Supplemental Affidavit alleging continuing contempt filed and served; Court allows filing of supplemental affidavits for continuing contempt; Mother's Motion to Dismiss filed and served.
- 14
- 15 November 24, 1993 Supplemental Affidavit alleging continuing contempt.
- 16 February 14, 1994 Hearing set for April 14, 1993.
- 17 April 5, 1993 Stipulated Order for Continuance.
- 18 August 9, 1994 Supplemental Affidavit alleging continued contempt filed and served. Motion to Set Aside Continuance filed and served.
- 19
- 20 November 30, 1994 Mother's Motion to Modify/Terminate Grandfathers visitation filed.
- 21 January 18, 1995 Motion to Modify/Terminate Grandfather visitation served on Grandfather.
- 22 February 2, 1995 Response to Motion to Modify/Terminate filed and served.
- 23 February 5, 1995 Order to Show Cause: Contempt refiled.
- 24 February 7, 1995 Order to Show Cause: Contempt served upon Mother.
- 25 February 21, 1995 Supplemental Affidavit alleging continuing contempt filed and served.
- 26 ////

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1 February 23, 1995 Amended Response to Mother's Motion to Modify/Terminate filed and
2 served.

3 VISITATION HISTORY

4 The evidence will show that Grandfather's visitation with Josalyn has been severely limited
5 with long periods during which no visitation was allowed by Mother nor information about the
6 whereabouts of his granddaughter given to Grandfather. Grandfather's visits occurred as follows:

7 July-August 1991 Supervised visits as per Judgment.

8 February 13, 1992- Supervised visits as per Order for Stay Pending Appeal.
9 October 15, 1992

10 April 1993 Two supervised short-term visits.

11 December 1993- Unsupervised weekend visitation as per Judgment.
12 March 1994

13 April 1994 One short-term unsupervised visit - Josalyn's birthday.

14 FACTS

15 This matter is a classic case of a party who wilfully opposes the Court's orders and will
16 do whatever she can to frustrate the Court's intent and Grandfather's visitation rights.
17 Unfortunately, the newest and latest developments could have been predicted by anyone familiar
18 with this case.

19 When Grandfather sought court protection of his visitation rights, Mother opposed any
20 rights. When Grandfather was awarded substantial visitation rights, Mother appealed. When
21 Grandfather sought to enforce his visitation rights, Mother sought a stay pending appeal.

22 Since the Court of Appeals affirmed Grandfather's visitation rights, Mother began denying
23 visitation and continually failed provide an address sufficient to allow visits or phone number for
24 contact with the child. When Grandfather sought information from Mother's mother about
25 Josalyn's whereabouts and arranging visitation, Mother wrote Grandfather and specifically forbade
26 contact with her mother about visitation. Exhibit 4.

////

1 Only when Grandfather has filed contempt proceedings against her or to during the
2 pendency of her appeal has Mother reluctantly provided some visits for Grandfather and Josalyn.
3 For example, for a short time (from Dec 93-Mar 94) during the pendency of this current
4 proceeding Grandfather was allowed to see Josalyn on the schedule ordered by the Court.

5 However, once Grandfather agreed to set over trial for six months, Mother immediately
6 left the state of Oregon and took up residence in Texas and did all she could to frustrate
7 Grandfather's efforts to visit Josalyn. But just before leaving for Texas, Mother played the abuse
8 card yet again, taking Josalyn to the Sweet Home police where Mother falsely accused
9 Grandfather of improper conduct with Josalyn.

10 Grandfather wrote to Mother in April of 1994 requesting that his summer visit take place
11 during the first week of July 1994 and that he would travel to Texas for the visitation. Mother
12 wrote back to Grandfather and request to change the visitation date to accommodate her husband's
13 vacation visit which Mother claimed was scheduled for that time. Grandfather and Mother wrote
14 to each other or spoke on the telephone a number of times to set up this visit for the first week
15 of August 1994.

16 But in an affidavit dated August 16, 1994, Mother claimed that she was not provided
17 notice of the visit. Later, in November 1994, she filed a motion seeking modification or
18 termination of Grandfather's visitation alleging improper conduct. Inexplicably, she delayed
19 service upon Grandfather until January 18, 1995, all the while knowing that this matter had
20 already been set for trial.

21 The issue of contempt remains simple, and demonstrates the motive and intent for
22 Mother's Motion to modify or (she hopes) terminate Grandfather's visitation rights.

23 Grandfather was awarded specific visitation rights. Mother was required to provide
24 Grandfather her address and contact telephone number so that Grandfather could pick up the
25 child for visitation. Mother simply refuses to provide this required information. The only
26 address she consistently provided to Grandfather was a Portland post office box.

1 A simple question the Court must answer when deciding this case: How could
2 Grandfather visit Josalyn when he was given nothing more than a Portland post office box as an
3 address for visitation with the child at a time when Mother has taken the child to undisclosed
4 locations in California, Alaska, Oregon, or Washington?

5 Mother has willfully attempted to frustrate the Court's decision and Grandfather's visitation
6 at every turn. First, Mother falsely claimed Grandfather was a "documented child abuser." The
7 Court found Grandfather a fit person to visit the child and found that visiting Grandfather was
8 in the child's best interest. Ex 2.

9 Then Mother falsely accused Grandfather of assaulting her. She called the Salem police
10 and filed a police report accusing Grandfather of assault and battery. Ex 5. Mother recently
11 admitted she lied to the police. Ex. 6.

12 Now Mother claims that she acted out of fear for Josalyn when she denied Grandfather
13 his 1994 summer vacation. But in her affidavit of August 16, 1994 she made a detailed
14 statement supporting her claim that Grandfather failed to give her 60 days notice of the visit not
15 because of any fear she had for Josalyn. Only later, when she filed her Motion to
16 Modify/Terminate visitation did she detail her specious claims of abuse.

17 Only a finding of contempt, a money judgment, an award of attorney fees and expenses
18 and a fine and imprisonment to compel compliance will get Mother's attention. The delay in
19 enforcing the Judgment has been unconscionable. Mother's record shows that she will not to
20 comply with the Judgment without the imposition of heavy sanctions.


21 The court should find Mother in contempt of the Judgment and orders as alleged in
22 Grandfather's pleadings. The court should order that Mother be imprisoned until such time as
23 the child is delivered to Grandfather for visitation. The court should require that visitation
24 include not less than one week unsupervised visitation to commence immediately in addition to
25 the regularly scheduled summer visitation. The court should order that Grandfather should have
26 make-up visitation on the first weekend of each month in addition to the regularly scheduled visit

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on the third weekend of each month through calendar year 1995. The court should order that the child not be removed from the state of Oregon without notice to Grandfather and approval by the court and that in no event shall the child be removed from the state before the January 1, 1996. The court should further award Grandfather money damages for the loss of his Granddaughter's love, companionship and society caused by Mother's contempt as well as all costs incurred by Grandfather attempting to visit the child and attorney fees and costs incurred in this litigation. Finally, the court should order that Mother pay a fine of \$1,500 and serve 15 days in jail for every weekend visit denied to Grandfather and pay a fine of \$5,000 and serve 45 days in jail for every summer vacation visit denied to Grandfather. All the above sanctions are remedial sanctions.

DATED this 19th day of June 1995.


Jad Lemhouse OSB No. 89289
Attorney for Plaintiff/Relator
(Grandfather)