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FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO

SUPREME COURT OF COLORADO

Case No. 85SA433

MAR 25 1986

RESPONSE TO MOTION TO DISSOLVE STAY ORDER AND APPLICATION FOR
ORDER TO SHOW CAUSE

Mac V. Danford, Clerk

SHARYN ASHLOCK, n/k/a SHARYN ALDEN,

Petitioner,

v.

DISTRICT COURT, 5th JUDICIAL DISTRICT, COLORADO and HONORABLE
WILLIAM JONES, Chief Judge Thereof,

Respondent.

Petitioner, Sharyn Alden, through her counsel, responds to Respondent's Motion to Dissolve Stay Order and Application for Order to Show Cause as follows:

MOTION TO DISSOLVE STAY

1. Ms. Alden has filed an action in Dane County, Wisconsin, pursuant to the Uniform Child Custody Jurisdiction Act C.R.S. § 14-13-101 et seq (1973). This Court was made aware of this filing by submission to the Court of the pleadings on record in the Wisconsin jurisdiction. Respondent has alleged that the Wisconsin filing should cause this Court to dissolve the stay currently in effect. Ms. Alden respectfully requests that the Court deny the request.

2. The action taken by Ms. Alden is completely consistent with the uniform law adopted by both Colorado and Wisconsin. Ms. Alden and the child have resided in Wisconsin for many months. Under the U.C.C.J.A., it is appropriate for the court in the jurisdiction in which the child resides to determine issues relating to the child. However, the determination as to which court should retain the action is one left to the respective courts to decide after consultation. Here, after this Court issues its order, the Colorado trial court under the uniform law will be free to confer with another jurisdiction to determine which forum is more appropriate to decide issues related to the child. Ms. Alden does not make that decision for the Colorado court merely by the filing of an action in Wisconsin. Quite to the contrary, the Colorado court remains free to decide the issue after careful consideration and reflection with the Wisconsin judiciary.

3. The timing of the filing of Ms. Alden's motion in Wisconsin has also been questioned. The motion was filed while the stay was currently in effect here in Colorado. The matter was set for hearing in Wisconsin, for the sole purpose of advising the Wisconsin court of the status of the Colorado action, not to seek a judicial conference between the two courts, which would clearly compromise the stay currently in effect here in Colorado. The court in Wisconsin confirmed the stay through the Colorado court. As a result, no action has been taken in Wisconsin to decide this issue, given the existing stay here in Colorado pending this Court's decision.

4. The most critical issue before this Court is clearly overlooked by Respondent. The request to invoke the Uniform Child Custody Jurisdiction Act in the state in which the child now resides, which will ultimately cause a judicial conference between the Wisconsin and Colorado judiciary, does not affect the issues on appeal before this Court. Regardless of which court ultimately exercises jurisdiction in this case, the trial court here has improperly and in contravention of the Colorado statutory protection afforded children in dissolution of marriage, changed custody from Ms. Alden to Mr. Ashlock. This Court's order regarding the improper change of custody is essential to resolving the action, regardless of which jurisdiction will ultimately decide the issue of custody. There has been no effort whatsoever to circumvent the stay entered by this Court or the exercise by this Court of its authority to determine the interlocutory writ. Ms. Alden properly filed the action under the uniform laws and directly notified this Court of the filing in order to avoid any confusion. The filing will affect future proceedings, not the issue before this Court today.

APPLICATION FOR ORDER TO SHOW CAUSE

5. Respondent makes much of the address listings in the Wisconsin proceeding, claiming that a failure to list the Illinois address provided to the Colorado court is a fraud upon the court either in Wisconsin or Colorado. This is simply not the case.

6. Ms. Alden left the state of Colorado and did relocate to Illinois. However, no sooner had the address given to the Colorado court reach Mr. Ashlock, than he contacted family members of Ms. Alden, claiming to be in Illinois, coming after Ms. Alden. Ms. Alden fled Illinois almost immediately.

7. In light of this experience, Ms. Alden did not change her address on file with the Colorado court, but left the Illinois address as her mailing address, from which she has always been forwarded her mail. Mr. Ashlock has never attempted written contact with Ms. Alden by use of this address.

8. Since Ms. Alden was forced to leave the Illinois area almost immediately upon arrival, the address is not listed as a former residence for purposes of the Wisconsin proceedings. The objective or subjective criteria for listing of such a residence in Wisconsin for purposes of such pleadings is unknown to Colorado counsel. However, it is clear that no fraud was committed upon either court in this action. Ms. Alden maintained a valid address from which she received all correspondence mailed to her and related to this action. The sole reason for not changing that address with the court was the fear of physical violence.

WHEREFORE, Ms. Alden respectfully requests that this Court continue the stay in full force and effect until such further order of this Court on the issues presented by interlocutory writ. Further, Ms. Alden requests that this Court deny the Application for an Order to Show Cause on the issue of her residence, where all statutory requirements have been satisfied, the Court now has a post office box address in Wisconsin and any further disclosure could place Ms. Alden in seriously jeopardy.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that on this 25th day of March, 1986, a true and correct copy of the foregoing RESPONSE TO MOTION TO DISSOLVE STAY ORDER AND APPLICATION FOR ORDER TO SHOW CAUSE was deposited in the U.S. mails, postage prepaid, addressed to the following:

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