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FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO
AUG 20 1980

NO. 80SA368

David W. Bazina

IN THE
SUPREME COURT
OF THE
STATE OF COLORADO

KAREN JEAN LANE BROCK)
)
 Petitioner,)
)
 vs.)
)
 THE DISTRICT COURT OF THE)
 COUNTY OF BOULDER IN THE)
 20th JUDICIAL DISTRICT,)
 STATE OF COLORADO and the)
 HONORABLE HORACE B. HOLMES,)
 one of the Judges thereof,)
)
 Respondents.)

ORIGINAL PROCEEDING IN THE
NATURE OF PROHIBITION AND
MANDAMUS

PETITION FOR WRIT IN THE NATURE OF
PROHIBITION AND MANDAMUS

FRENCH & STONE
GARY S. MALLO, #6640
JOSEPH C. FRENCH, #4398
720 Pearl Street
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(303) 449-3891
Attorneys for Petitioner

IN THE SUPREME COURT
OF THE STATE OF COLORADO
Civil Action No. _____

KAREN JEAN LANE BROCK)	
)	
Petitioner,)	
)	
vs.)	
)	
THE DISTRICT COURT OF THE)	PETITION FOR WRIT IN THE
COUNTY OF BOULDER IN THE)	NATURE OF PROHIBITION AND
20th JUDICIAL DISTRICT,)	MANDAMUS
STATE OF COLORADO and the)	
HONORABLE HORACE B. HOLMES,)	
one of the Judges thereof,)	
)	
Respondents.)	

COMES NOW the Petitioner, Karen Jean Lane Brock, by and through her attorneys, French & Stone, and petitions this Honorable Court to issue a Writ in the Nature of Prohibition and Mandamus to the above named Respondents and as grounds therefore states:

JURISDICTIONAL STATEMENT

That the Supreme Court of Colorado has original jurisdiction herein pursuant to:

1. Article VI, Section 3, of the Colorado Constitution.
2. Colorado Appellate Rule 21, as amended.

PARTIES

1. The Petitioner is designated as the respondent in a civil action entitled, "In re the custody of: John Hunter Lane, John Robert Lane, Petitioner, and Karen Jean Lane Brock, Respondent", Civil Action No. 80-DR-1405-3, in the District Court in and for the County of Boulder, State of Colorado. Such action was commenced on July 29, 1980, by the filing of a "Verified Petition and Complaint for Award of Custody" annexed hereto.

2. The Respondent District Court is the court in which "In re the custody of: John Hunter Lane" is filed.

3. The Honorable Horace B. Holmes is the District Judge to whom "In re the custody of: John Hunter Lane" is assigned.

STATEMENT OF FACTS

1. Petitioner herein incorporates by reference the following pleadings, filed in "In re the custody of: John Hunter Lane", and attached hereto:

- (a) Summons and Verified Petition and Complaint for Award of Custody.
- (b) Motion to prevent the removal of Hunter Lane from Boulder County, Colorado.
- (c) Affidavit of the Petitioner, John Robert Lane.
- (d) Motion to Dismiss submitted by the Respondent.
- (e) Memorandum of Law in Support of Motion to Dismiss.
- (f) Memorandum Brief in Opposition to Motion to Dismiss.
- (g) Petition for Writ of Habeas Corpus Re: Custody.
- (h) Affidavit of Respondent, Karen Brock.
- (i) Copy of Certified Decree in case of Lane v. Lane, County of Floyd, State of Georgia.
- (j) Georgia Code Annotated §74-501 et. seq., Uniform Child Custody Jurisdiction Act.
- (k) Georgia Code Annotated §24-301b et. seq., Georgia Child Custody Intrastate Jurisdiction Act.

2. The marriage between John Robert Lane and Karen Jean Lane Brock was dissolved by divorce decree on May 28, 1976, which decree granted custody of their one minor child to the Mother, Karen Brock.

3. On June 18, 1980, the minor child came to Colorado for a one month visit with his Father. The child should have been returned to the Mother on July 18, 1980. However, the Father kept the child in violation of this arrangement.

4. John Robert Lane filed, on July 29, 1980, a Summons and Verified Petition and Complaint for Award of Custody accompanied by an Affidavit of John Robert Lane and

Motion to prevent the removal of Hunter Lane from Boulder County, Colorado.

5. Karen Brock thereupon submitted her Motion to Dismiss the within action based upon her Memorandum of Law in Support of Motion to Dismiss citing inter alia various sections of the Uniform Child Custody Jurisdiction Act including CRS (1973) §14-13-115(1).

6. On the 8th day of August, 1980, a hearing was held by the Honorable Horace B. Holmes in the Respondent District Court. The Petitioner John Robert Lane appeared with counsel, John G. Taussig, Jr., registration #3696, and the Respondent Karen Jean Lane Brock with her counsel, Gary S. Mallo, registration #6640. Affidavits were submitted to the court and testimony was taken from the Petitioner John Robert Lane. The respective counsel made oral arguments to the court based upon their briefs submitted to the court on Respondent's, Karen Jean Lane Brock, Motion to Dismiss. The court did not receive any testimony from the Respondent, Karen Jean Lane Brock, because of a conflict in the court's docket which necessitated the early termination of the hearing.

7. The court released its ruling at five o'clock on that same afternoon finding inter alia, that: (a) The state of Georgia had adopted the Uniform Child Custody Jurisdiction Act effective January 1, 1979. (b) That under Georgia law, the court which originally made the custody award did not retain jurisdiction over the subject matter and parties to amend or modify the award. (c) That no Georgia court currently had jurisdiction over the parties or the subject matter pursuant to Georgia Code Annotated, Section 24-304b(a), Banister v. Banister, 240 Ga 513, 214 S.E.2d 247 (1978). (d) That CRS (1973) §14-13-115 did not apply to the instant case because the Georgia court did not have continuing jurisdiction over the parties or the subject matter. The court then held that it had jurisdiction over

the subject matter and the parties and consequently had jurisdiction to rule on Petitioner's prayer that he be the permanent legal custodian of the minor child. The court further awarded temporary custody of the minor child to the Petitioner, John Robert Lane, ordering that Karen Brock submit to psychological testing and evaluation and that the minor child not be removed from Boulder County, Colorado without prior permission obtained from the court. Karen Brock's Petition for Habeas Corpus was denied.

8. The Petitioner herein, does hereby bring the issue concerning whether or not the Respondent Court had the right to exercise jurisdiction to hear matters concerning the permanent custody award of the minor child, John Hunter Lane. Petitioner, Karen Brock, petitions this Court on the grounds that the Respondent Court exceeded its jurisdiction in violation of C.R.S. (1973) §14-13-115(1) and submits her Brief, attached hereto, in support of her Petition.

9. The Petitioner has no plain, speedy and adequate remedy of law to have the minor child, John Hunter Lane, returned to her lawful custody and that the child is being deprived of the company and care of his mother, Karen Brock, and of his schooling in the State of Georgia. Matters herein are of great public importance and involve matters concerning the illegal retention of a child by the non-custodial parent in order to obtain a favorable forum in which to obtain custody of the minor child; all of which was intended to be curtailed by Colorado's Uniform Child Custody Jurisdiction Act which objectives have been frustrated by the order of the Respondent Court herein.

CLAIM FOR RELIEF

WHEREFORE, Petitioner prays that this Honorable Court issue a Writ of Prohibition and Mandamus, ordering the

Respondents to show cause why the Order of the District Court should not be stayed and dissolved, why the Verified Petition and Complaint for Award of Custody in Civil Action No. 80-DR-1405-3 should not be dismissed, and the Georgia custody decree enforced and for Petitioner's costs and attorneys fees and for such other and further relief as the court deems just and proper.

DATED this 19th day of August, 1980.

Respectfully submitted,

FRENCH & STONE

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