

1 SUPERIOR COURT OF CALIFORNIA

2 COUNTY OF SAN FRANCISCO

3 BEFORE THE HONORABLE ROGER C CHAN, JUDGE PRESIDING

4 DEPARTMENT NUMBER 416

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6 STEPHEN RUSSELL )  
7 Petitioner, )

Case No. FPT 18-377425

8 vs. )

9 TARA WALSH )  
Respondent, )

10 **C O P Y**

11 Reporter's Transcript of Court Proceedings

12 THURSDAY, AUGUST 16TH, 2018

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23 GOVERNMENT CODE § 69954 (D): ANY COURT, PARTY, OR PERSON WHO  
24 HAS PURCHASED A TRANSCRIPT MAY, WITHOUT PAYING A FURTHER FEE TO  
25 THE REPORTER, REPRODUCE A COPY OF PORTION THEREOF AS AN EXHIBIT  
26 PURSUANT TO COURT ORDER OR RULE, OR FOR INTERNAL USE, BUT SHALL  
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28 PARTY OR PERSON."

Reported by: Gordon F Aiavao, CSR #11216  
Official Reporter

1 Thursday, August 16th, 2018

2 Department 414

3 Stephen Russell vs Tara Walsh

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5  
6 **THE COURT:** Let's go on the record. This is line 1 on the  
7 court's 10:00 o'clock calendar. Court number FPT 18377425.  
8 Stephen Russell versus Tara Walsh.

9 The matter is on calendar for a bench conference between  
10 this court and Judge Gordon-Oliver in New York for UCCJEA bench  
11 conference pursuant to Family Code section 3423 and 3426.

12 Counsel will not be present for this conference call. A  
13 transcript of the proceedings will be provided to both counsel  
14 as well as to the New York court.

15 And we'll go off the record for a moment while we wait for  
16 the call to initiate with Judge Gordon-Oliver.

17 *(Whereupon there was a pause in the proceedings.)*

18 **THE COURT:** Good morning. Judge Gordon-Oliver?

19 **HON. GORDON-OLIVER:** Judge Chan?

20 **THE COURT:** Hello. Nice to meet you.

21 **HON. GORDON-OLIVER:** Nice to meet you too.

22 **THE COURT:** I'm on the record in my courtroom. There is no  
23 one present but me and the court personnel.

24 **HON. GORDON-OLIVER:** I do have with me one of the court  
25 attorneys in my court Christa Harper.

26 **THE COURT:** Great.

27 **MS. HARPER:** Hi, Judge Chan.

28 **THE COURT:** Hi.

1           **HON. GORDON-OLIVER:** She's reviewing some of the documents  
2 and helping me to figure out what's going on here.

3           **THE COURT:** Thank you for talking to us during your lunch  
4 break. It sounds like you have a really busy calendar today.

5           **HON. GORDON-OLIVER:** You have no idea. There were 80  
6 dockets today. Yesterday it was 90. Something like that. So  
7 it was crazy.

8           **THE COURT:** So I have our official court reporter here.  
9 We'll make the transcript and provide a copy to you as well as  
10 to the California attorneys.

11           But I don't want to take up too much of your time. I know  
12 you have a lot to do.

13           I think the decision that we need to make today is where the  
14 evidentiary hearing on jurisdiction will be heard.

15           **HON. GORDON-OLIVER:** Okay.

16           **THE COURT:** So would you like me to tell you what I have in  
17 California or did you want to begin?

18           **HON. GORDON-OLIVER:** No. Go ahead and tell me what you have  
19 in California.

20           **THE COURT:** I have three motions pending.

21           The Father filed a petition to establish parental  
22 relationship on June 4th, 2018.

23           My three motions are Mother's motion to dismiss for lack of  
24 jurisdiction which was filed on June 28th, 2018.

25           And then I have Father's request for custody and visitation  
26 filed on July 10th, 2018.

27           And Father's request for domestic violence restraining order  
28 filed on July 13th, 2018.

1           The court here has not made any orders on custody and  
2 visitation.

3           The Father's request for temporary emergency custody and  
4 visitation orders was denied on July 10th, I believe.

5           And Father's request for the DV restraining order does not  
6 include the child.

7           So Father was granted an emergency protective order on  
8 July 3rd and then a temporary restraining order on  
9 July 16th restraining the Mother.

10          And I am scheduled for hearing on the motion to dismiss  
11 child custody and DV on August 29th and August 30th.

12          The San Francisco court also made an order on August 14th --  
13 so just a couple days ago -- awarding the Mother attorney's fees  
14 in the amount of \$15,782 without objection from the Father.

15          So I understand from the documents that I was provided that  
16 in New York there was a temporary order hearing on July 2nd.

17          **HON. GORDON-OLIVER:** Yes.

18          **THE COURT:** And that Mother's verified petition was filed in  
19 New York on July 12th.

20          And then I have a copy of your July 16th order on custody  
21 and visitation.

22          **HON. GORDON-OLIVER:** Right.

23          **THE COURT:** And then the additional information that I have  
24 is that on Mother's motion to dismiss she -- I believe her  
25 identified witnesses are herself, the Father, and a security  
26 guard in New York named Joseph Prendergast.

27          P-R-E-N-D-E-R-G-A-S-T.

28          **HON. GORDON-OLIVER:** Okay.



1 subject child.

2 So we're really just trying to see whether or not you were  
3 going to hold on to the matter or if you were freely and  
4 voluntarily giving it back to us.

5 **HON. GORDON-OLIVER:** If I could just follow up with what  
6 Christa just said, Judge, I also assigned an AFC, an attorney to  
7 the child, I don't know if you've done that on your end and the  
8 AFC has done her own work. She's vetted. She's provided me  
9 with an affirmation that she says the child is fine. The Mother  
10 being with the, her parents.

11 She really believes that the child should remain in New York  
12 for the duration with the Mother. And if that's the case, then  
13 notwithstanding the witnesses that the Father might have in  
14 California, the Mother also has witnesses here. And in addition  
15 the child seems to be safe here in New York. No issues have  
16 been brought to my attention.

17 So let me defer to you now on the issue of the jurisdiction  
18 as far as what you think you might want to do.

19 **THE COURT:** Sure. As I said the San Francisco court as not  
20 made any orders regarding custody and visitation.

21 And I have the financial declarations for both parties. And  
22 Father has significantly more income and assets than Mother. So  
23 he's in a better position financially if he had to go to New  
24 York for hearing.

25 The California codification of the UCCJEA, I think I have  
26 two provisions that apply to our current situation.

27 One is the simultaneous proceedings. And for us that's  
28 California Family Code section 3426.

1           And then I think the potentially second possible applicable  
2 statute is California Family Code 3423, which is about  
3 modification of custody determination made by a court of another  
4 state.

5           And when I look at the statutes, it appears to me that when  
6 a court of another state has already made a custody order, I  
7 think there are maybe three issues that apply right now.

8           One is whether or not New York assumed jurisdiction  
9 substantially in compliance with the UCCJEA.

10          Second is whether or not New York wishes to relinquish  
11 jurisdiction.

12          And then third I think one of the issues for the parties is  
13 whether or not Mother requested and obtained jurisdiction in New  
14 York through unclean hands.

15          But it seems to me that if you wish to keep the custody and  
16 visitation matters, and given my take of the California  
17 statutes, that the hearing on jurisdiction is more appropriately  
18 heard in New York before you taking into account that Father may  
19 have to have his witnesses either flown out or testify by phone  
20 or by written declaration.

21          But it just seems to me that given that you've already made  
22 custody orders and you have minor's counsel appointed, that your  
23 court is the more appropriate one for the parties to hash out  
24 whether or not jurisdiction was proper in New York or it should  
25 be in California.

26          So I don't have any problem having a hearing here, but, and  
27 I'm not familiar with New York law obviously, but if you agree  
28 it looks to me that the factual hearing on jurisdiction based

1 under the UCCJEA belongs in the court that has issued orders.

2 HON. GORDON-OLIVER: And I would agree with that. Go ahead,  
3 Christa.

4 MS. HARPER: Under the UCCJEA, for us that is the DRL 76-S,  
5 it says that a court of this state which has jurisdiction, it  
6 says, it talks about the inconvenient forum, which I think gives  
7 us the basis to keep this.

8 Based on what you said, you have the financial information.  
9 We don't have any financials yet, but we know the Father is an  
10 inventor of some sort and has patents. The Petitioner, the  
11 Mother, did not have any real resources in California.

12 So I know that you're saying a hearing. We're prepared.  
13 New York is prepared to take this one.

14 THE COURT: All right. And I should also add that my  
15 understanding is that the child was born in New York.

16 HON. GORDON-OLIVER: Correct.

17 THE COURT: Which is a factor for us as to whether or not  
18 California would have been the home state jurisdiction anyways.

19 HON. GORDON-OLIVER: That's right.

20 THE COURT: So what I think, if you agree, what I think I  
21 will do is stay the, stay the petition to establish parental  
22 relationship and related motions including the motion to  
23 dismiss, and continue, I think I have jurisdiction over Father's  
24 DV restraining order request so I will hear that. And as I said  
25 the child is not included on it.

26 But I think if you agree I'll stay the custody and  
27 visitation portion of the California proceedings pending your  
28 ruling as to the proper forum.

1       **HON. GORDON-OLIVER:** Judge Chan, would you be able to have  
2 one of your clerks at least email the restraining order to this  
3 court so that we would not do anything that would conflict with  
4 whatever provisions are for the Father's restraining order?

5       **THE COURT:** Absolutely. Now, procedurally -- and I think we  
6 can do that for you today -- procedurally do you want -- well.  
7 Let me take that back.

8       So Father is the Petitioner in San Francisco and the motion  
9 to dismiss is from Mother. So do you want the Father to then  
10 file his motion in New York if he chooses? Because I don't  
11 think I can transfer my proceedings to you. Especially since  
12 they're in the reverse position.

13       **HON. GORDON-OLIVER:** Right. He can definitely do that if he  
14 so desires. And I know also he's never filed a custody petition  
15 before my court but he is --

16       **MS. HARPER:** He did file the opposition.

17       **HON. GORDON-OLIVER:** He filed an opposition to the Mother's  
18 custody petition, but he's not filed a petition on his own for  
19 legal custody. So I'm not sure what he intends to do with that  
20 issue. But yes. He should file whatever he needs to assert in  
21 New York.

22       **THE COURT:** All right. So that is what I will do then. I  
23 will stay the California child custody portion of the case.

24       And I will proceed with the DV hearing.

25       And then I will ask the clerk to email to you whatever the  
26 order after hearing is on the DV request.

27       **MS. HARPER:** And you can always address what the Father  
28 wants to do because he has appeared. I don't know if he wants

1 to address everything in New York, you know, just to have  
2 consistency, and then maybe that way you won't transfer or  
3 you'll dismiss it without prejudice and just let us know what  
4 the status is. Of course that's definitely your choice.

5 **THE COURT:** I will let him know if he wants to, if he wants  
6 to withdraw his DV restraining order request here and refile in  
7 New York and leave it up to him.

8 I should note that many of the allegations in the domestic  
9 violence restraining order request overlap with the allegations  
10 in Mother's motion to dismiss. And it's sort of cross  
11 allegations.

12 Mother has not filed a DV restraining order request in  
13 California.

14 **HON. GORDON-OLIVER:** Right she --

15 **MS. HARPER:** -- she has an order requesting one here.

16 **THE COURT:** All right. Then I think we have a plan.

17 **HON. GORDON-OLIVER:** It sounds good.

18 **THE COURT:** All right. Thank you so much and again we'll  
19 transmit the related documents on the restraining order request.

20 **HON. GORDON-OLIVER:** And if there's anything that you need  
21 from us then you'll let us know.

22 **THE COURT:** Thank you very much.

23 **HON. GORDON-OLIVER:** Thank you, Judge Chan.

24 **THE COURT:** Have a great day.

25 **HON. GORDON-OLIVER:** You too. Bye-bye.

26  
27 **(Whereupon the proceedings were concluded.)**  
28

1 State of California )  
2 County of San Francisco )

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4  
5 I, Gordon F. Aiavao, Official Reporter for the Superior  
6 Court of California, County of San Francisco, do hereby certify:

7 That I was present at the time of the above proceedings;

8 That I took down in machine shorthand notes all proceedings  
9 had and testimony given;

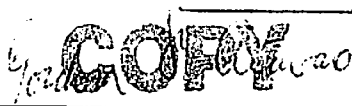
10 That I thereafter transcribed said shorthand notes with the  
11 aid of a computer;

12 That the above and foregoing is a full, true, and correct  
13 transcription of said shorthand notes, and a full, true and  
14 correct transcript of all proceedings had and testimony taken;

15 That I am not a party to the action or related to a party  
16 or counsel.

17 That I have no financial or other interest in the outcome  
18 of the action.

19  
20  
21 Dated: AUGUST 30TH, 2018  
22

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25 \_\_\_\_\_  
26 Gordon F. Aiavao, CSR No. 11216  
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