

1 CASE NUMBER: BD 621 137
2 CASE NAME: REED RANDOY VS. MARIEKE RANDOY
3 LOS ANGELES, CA FRIDAY, JULY 31, 2015
4 DEPARTMENT 22 HON. TAMARA HALL, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: ELSA BANDA LARA, CSR NO. 3226
7 TIME: A.M. SESSION

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10 THE COURT: Do we now have all sides for number
11 15, Randoy versus Randoy?

12 MR. SALICK: Yes.

13 THE COURT: Let's call that matter, please.

14 State your appearances, please.

15 MR. SALICK: Good morning, Your Honor, Nicholas
16 Salick for the Petitioner who is present at counsel
17 table.

18 MS. RESNIK: Good morning, Your Honor, Anat Resnik
19 on behalf of Respondent who is present as well.

20 THE COURT: Okay. And if you can swear the
21 parties.

22 THE CLERK: Please raise your right hands to be
23 sworn.

24 (The Petitioner and the Respondent are
25 sworn by the Clerk.)

26

27 THE COURT: Everybody have a seat. Now, you were
28 here July 1st -- July 15th, 2015, for a hearing

1 regarding the ex parte that the Petitioner had
2 previously filed.

3 The court had the hearing. The court found
4 there were no exigent circumstances. And at that
5 hearing the court attempted to make child custody and
6 visitation orders. And it was brought, raised by the
7 Respondent that the court did not have the jurisdiction
8 to do so because California is not the home court --
9 the home state.

10 And she argued that it was court in British
11 Columbia -- I mean, British -- Canada, BC, Canada, and
12 the court -- she stated that a case had already been
13 filed in British Columbia, Canada and that that had been
14 appointed -- a judge had been appointed -- assigned to
15 the case.

16 And this court, following the rule of law
17 ordered that the Respondent give to this court the name
18 of the judge and the telephone number so that the court
19 can have a discussion and a discussion to take place on
20 the record between the two judges regarding jurisdiction
21 and who is the home state.

22 And we set this matter out until today's
23 date, July 31st, so that the court could start the
24 process and make contact with the judge in Canada so
25 that we can have this conference.

26 And I was waiting for the information and I
27 was told that there was no information forthcoming, so
28 the matter was still set for today.

1 And what I did receive in the interim was
2 the Petitioner's memorandum of points and authorities
3 supporting that California is the home state of the
4 minor child, filed on July 17th, 2015, and a brief from
5 -- the Respondent now has counsel, a brief from
6 Miss Resnik, attorney Resnik, filed July 20th, 2015,
7 regarding jurisdiction and request for sanctions.

8 And, essentially, Petitioner, still at the
9 same point, Petitioner states that the California is the
10 home state and this court has the ability to make
11 custody and visitation orders. And counsel for the
12 Respondent is saying just the opposite, California does
13 not have home state jurisdiction and cannot make the
14 orders.

15 So, if I am not, if California is not the
16 home state and this court cannot make orders, then who
17 is the home state and what is the name of the judge that
18 I am to have this conference with? We are still there.

19 MS. RESNIK: Correct, Your Honor.

20 And I wasn't familiar with Canadian law and
21 the way the process works in Canada. But I did provide
22 a declaration from Respondent's counsel in Canada under
23 penalty of perjury which basically explains that in
24 Canada the process is that you initiate a summons and
25 the commencement of the dissolution action.

26 The hearing, the first hearing on that
27 action is when you are assigned a judge. And there is
28 no assignment of a judge as we have here in Los Angeles

1 upon the initiation of the action.

2 THE COURT: Uh-hum.

3 MS. RESNIK: So, at this time Petitioner has yet
4 to file a response in the Canadian action, despite
5 having been served with the summons and the action.

6 And the next step would be either to take a
7 default against Mr. Randoy in Canada or, in the event
8 that he does file a response, thereafter, there is a
9 hearing that is set at which the judge is assigned.

10 As of now, there is no judge, I agree, for
11 purposes of this court communicating with another judge.

12 However, what is clear, nevertheless is
13 that all evidence points to the fact that California
14 nevertheless has never been the home court. And there
15 is no basis for this court to make any custody orders.

16 THE COURT: Well, I didn't make any custody
17 orders.

18 MS. RESNIK: Correct.

19 THE COURT: And your client stated that I could
20 not. And then counsel, they said, okay, well, she
21 violated the ATROs and she cannot remove the child from
22 the State of California pursuant to the ATROs. And
23 those apply. And your client wanted the court to modify
24 the ATROs, which you are well aware those are -- they
25 are ATROs, the court can't modify.

26 So we are still in the same place, the
27 child still remains here pursuant to the ATROs.

28 MS. RESNIK: Well, the issue that we have,

1 Your Honor, is the fact that the question of whether
2 California even has the right to make any orders,
3 whatsoever, with respect to custody or even the
4 automatic restraining orders, really comes down to the
5 issue of the Hague Convention. And the brief was clear
6 with respect to that.

7 As well as the fact that the child has
8 never resided in California in this 12 -- more than 12
9 months now, since April 2014, when the child was
10 permanently removed to Canada.

11 The entire action here should have been
12 just on the issues of support, division of property, if
13 that's what Petitioner wanted.

14 There was never a basis for Petitioner to
15 have custody be part of this case. And we provided
16 objective evidence, despite Petitioner's claims to the
17 contrary, that California was never the residence of the
18 minor child.

19 The declaration under UCCJEA, the
20 Petitioner filed was a complete fraud on two -- for two
21 reasons: One, the child did not reside at the address
22 that Petitioner claimed, which was a Marina Del Rey
23 address that was a UPS store.

24 We provided objective evidence that the
25 address that he specifically signed under penalty of
26 perjury on the declaration under UCCJEA was his
27 residence with the minor child from April 2014 to the
28 present, that is not a residence, it's simply a mailing

1 address, a drop off.

2 Secondly, Petitioner also claims on the
3 declaration under UCCJEA that he lived with the minor
4 child in Canada when his own declaration contradicts
5 that.

6 He claims he lived in California, that
7 Petitioner lived in California, and that the minor child
8 and mom lived in Canada at all times.

9 Now, he may argue whether that was a
10 permanent move or a temporary move. Again, we have
11 objective evidence that says that despite the fact that
12 Petitioner claims the parties separated in December
13 2014, after that date of separation, he exported
14 Respondent's card to Canada. He e-mailed everybody
15 saying the mom and child are officially in Canada.

16 He notified the landlord that mom can stay
17 in Canada with the child if she wants to as long as she
18 pays the rent.

19 He e-mailed even, you know, friends and
20 family notifying everybody that this is the plan.
21 "Everybody is in Canada and I will follow suit." He
22 never followed suit. He had a change of heart.

23 But that doesn't -- that doesn't deny the
24 objective facts in this case, which are for all intents
25 and purposes, this child has been residing in -- since
26 April 2014, until this court made orders that the child
27 return back to California, in Canada.

28 Canada is the child's home state. There

1 was no contact even between the child and California
2 with the exception of one visit that Respondent brought
3 the child to California for purposes of Petitioner being
4 able to spend time with the child.

5 It was during that time that Petitioner
6 essentially ambushed Respondent and served her, while
7 she's here just visiting, to allow him to visit with the
8 child. And now is saying, "I'm not giving you any
9 financial support. I'm not going to provide you with
10 any way to stay here in California but, guess what, here
11 you go, you are stuck here in California, the child is
12 stuck here in California and you can't go back home."

13 There is no way for my client to stay here
14 and there's no way for the minor child to have to stay
15 in essentially, not his home, under any which way that
16 you define it.

17 MR. SALICK: Your Honor, I'm sorry.

18 MS. RESNIK: Okay --

19 MR. SALICK: -- she's litigating, or she's arguing
20 exactly what's in the brief. But I can do the same
21 thing. I'm pretty sure the court would not appreciate
22 that, because it's not a good use of the court's time.

23 MS. RESNIK: May I just finish, Your Honor, my
24 last point?

25 THE COURT: Yes.

26 MS. RESNIK: Petitioner in his application to
27 lease the condominium in Canada specified in his name
28 that he is relocating to Canada so that he can pursue a

1 career in the entertainment industry.

2 There is all objective evidence showing
3 that California is not the child's home state from April
4 2014 until the present. Therefore, California cannot
5 make orders. There are no orders right now. I agree.

6 However, what Petitioner tried to do is get
7 emergency orders, temporary orders to circumvent the
8 home state.

9 THE COURT: Wait. We are past that, because the
10 court did not make emergency orders on the day we had
11 the hearing. We had -- the court made the ex parte,
12 then we had the hearing. The court found that there was
13 no emergency. So the court did not make any temporary
14 custody orders on July 15th, 2015.

15 That's when your counsel -- that's when
16 your client raised the issue of this court, California
17 does not -- doesn't have jurisdiction.

18 So, we are still where we are. I don't
19 know exactly what you are asking of the court.

20 MS. RESNIK: Okay.

21 THE COURT: Because if on -- what I'm hearing is,
22 if on the one hand, if the court has no authority to
23 make any orders, then the court -- on the other hand,
24 the court has no authority to grant, what I think you
25 are asking is to allow the mother to take the child back
26 to Canada.

27 If I have no authority, I have no
28 authority.

1 MS. RESNIK: But we do have the authority with
2 respect to the automatic -- okay, here's where the
3 authority --

4 THE COURT: Well, the -- well, the ATROs, the
5 ATROs, it sounds like you are challenging the ATROs. So
6 it sounds like you are asking the court to modify the
7 ATROs. But, again, that's still back dooring, asking
8 the court to make an order on custody and visitation in
9 favor of your client to take the child back to Canada
10 when you are arguing that I don't have the ability to do
11 that.

12 You can't argue both.

13 MS. RESNIK: Well, we can do one thing here,
14 Your Honor, we're asking for -- this -- this entire
15 process has been essentially a delay tactic to allow
16 Petitioner to keep the minor child in California without
17 granting my client any visitations, whatsoever, with the
18 exception of two visits for one hour, less than one
19 hour.

20 So we are in the wild, wild west, I agree.

21 Regrettably, with the way Canada works, the
22 judge there will not be assigned until Petitioner files
23 a response, which he has also delayed in the process of
24 doing that.

25 THE COURT: Okay. And if he doesn't file a
26 response they can proceed by way of default and then at
27 that time it would be assigned to a judge and then this
28 court can have a conversation with that court. Yes?

1 MS. RESNIK: Correct.

2 THE COURT: Okay. What's the time limit, assuming
3 he never files a response, what's the time period where
4 they, Canada court can proceed by way of default?

5 MS. RESNIK: They -- my understanding is that once
6 there's a default request, then that process will take
7 time. How much time, I don't know, until there's a
8 default hearing. And that could take time.

9 And here is the problem, and this is
10 exactly the friction here, we have a child that was --
11 my client had primary physical custody for an entire
12 year where Petitioner intermittently visited the child
13 in Canada.

14 Right now the child is with Petitioner who
15 works full time, more than full time, being taken care
16 of by a nanny, admittedly.

17 And Respondent has not been be allowed to
18 see child at all. He will not allow her any kind of
19 meaningful contact.

20 So, if we're going to make emergency orders
21 with respect to anything, we need to make emergency
22 orders with respect to protecting this minor child that
23 is being essentially negatively impacted by the fact
24 that Petitioner has not allowed for any contact and has
25 also delayed the process in Canada.

26 This is all within his control. And yet,
27 he has deprived the child of having the primary bond
28 that the child has had since he was born.

1 So, what we were asking this court,
2 Your Honor, and I believe that we can still do that
3 pending any future hearing, is that my -- my client is
4 not a flight risk. My client -- Petitioner knows where
5 my client lives. He's been paying the rent on where my
6 client lives. He knows the address, he can come there,
7 he can come back, just as he has been doing throughout.

8 We are simply asking, given the fact that
9 the child's home, objectively, has been in Canada, for
10 my client to be able to take the minor child back to
11 Canada and be able to await the -- this court --
12 whatever the future court date is here, and she will
13 stipulate that she will return with the minor child to
14 any future court date here, and in the interim be
15 allowed to be in Canada. When the court ordered for her
16 to return, she returned immediately.

17 When the court had the ex parte hearing as
18 indicated in my brief, the only reason she didn't appear
19 is because Petitioner refused to provide her the funds
20 that would allow her to buy a ticket to be able to
21 appear.

22 She told Petitioner, "I can't afford to fly
23 back with 24 hours notice to an ex parte hearing. Can
24 you please deposit money into my account?" He didn't,
25 so she didn't appear.

26 Did Petitioner notify this court that my
27 client made best efforts to try to appear, but couldn't
28 because he wouldn't provide her financial support? He

1 did not.

2 He, again, misled this court to believe
3 that she abducted the child and she was a flight risk,
4 which she is not. She has always been willing to comply
5 with all of the court orders. She has sought court
6 orders. I think, you know, this court knows how often.

7 She is -- she's willing to comply with any
8 and all court orders.

9 All we need is for the ability to be able
10 to return home, given the fact that there is no
11 residence for her here, no residence for the minor child
12 here. And given the fact that's in the child's best
13 interests for the minor child to be with mom.

14 That is really what we're requesting. We
15 can hold off on any custody -- any other custody and
16 visitation orders pending future hearing. We can set a
17 future hearing out to be safe 30 days.

18 I'm hoping that at that time Petitioner
19 will file the response in the action in Canada and that
20 we can expedite that process.

21 In the event that he does not and further
22 delays this process to his benefit thus far, then the
23 child should not be negatively impacted by that. And
24 certainly Petitioner should not get a windfall for these
25 tactics that he has played throughout this process,
26 starting with the initial petition for dissolution,
27 which wrongfully claimed that California had any
28 jurisdiction over the issue of custody.

1 THE COURT: Okay thank you. You may respond.

2 MR. SALICK: Thank you, Your Honor.

3 Okay, well, with respect to tactics, I
4 think Respondent is not one to make any allegations
5 against Petitioner.

6 As this court knows a couple of weeks ago
7 Respondent filed two ex parte applications. She gave us
8 notice for -- to be in court on the 13th, it was to be
9 in court on the 14th.

10 We came in on the 14th to find out that
11 Respondent had filed her ex parte on the 13th, and
12 actually in her notice notified the court that she did
13 give ex parte notice for July 14th, at 8:30. It was
14 denied, and so when we came in here July 14th, we got a
15 minute order from the clerk who was gracious enough to
16 provide it to me.

17 We were never served. I want to make this
18 very clear, because Respondent's papers that were filed
19 for this hearing are inaccurate. It's not true. We
20 were never served by Respondent of her ex parte papers
21 from either July 13th or 15th. My office had to order
22 it.

23 So, on July 15th, Respondent again gave us
24 ex parte notice to be in court July 16th at 8:30,
25 requesting the same relief. Exact same relief. And so,
26 we came here on July 16th at 8:30, only to find out that
27 Respondent had filed the ex -- again, had filed her
28 ex parte on --

1 THE COURT: Just one moment. Hold on one moment.

2 MR. SALICK: Thank you.

3 (Pause in the proceedings.)

4 THE COURT: Please proceed.

5 MR. SALICK: Thank you, Your Honor.

6 So only to find out that Respondent had
7 once again done exactly what she had done July 13th.
8 And this court again denied it, and, again, we didn't
9 get served with those papers.

10 So, when I came here, when we came here the
11 morning of the 16th, I had asked Respondent whether
12 she -- because at that time Miss Resnik was not
13 representing her, I walked up to Respondent and asked
14 her if she had papers for us and she said she did not.

15 It was filed yesterday and denied again,
16 which is very frustrating.

17 And so, and then we had the deadline with
18 respect to the briefs that we're in court now, the
19 deadline was the 17th. I believe Miss Resnik was
20 retained on or about the 16th or the 17th of July.

21 We filed and served our briefs timely. I
22 had to notify Miss Resnik of the deadline that
23 Respondent had missed, with respect to filing and
24 serving her briefs on the 17th.

25 We -- I did agree to stipulate, Miss Resnik
26 did give ex parte notice. It's one day, and, frankly,
27 I was exhausted. I was tired of coming into court for
28 stuff like that. Anyway so I stipulated to it. We

1 stipulated. What's one day? That's fine.

2 Then we get the brief and it is
3 procedurally defective in that I don't know if the court
4 received our objection and request to strike.

5 THE COURT: I do have that.

6 MR. SALICK: The points and authorities, because
7 it's 21 pages long, and Respondent did not seek leave of
8 court to get the court's permission to file points and
9 authorities in excess of 15 pages.

10 With respect to Respondent's added claim
11 that Canada -- the Canada move was a permanent move, if
12 the court recalls, the Exhibit A to the declaration of
13 Petitioner filed on July 17th, 2015, it's a text message
14 between the parties, from Respondent to Petitioner,
15 dated May 22nd, 2015, because it's voluminous I
16 underlined the points -- the portions that we wanted the
17 court and counsel to pay attention to.

18 But in the last paragraph, quote:

19 "I want to move back to L.A., make
20 no mistake." Exclamation point,
21 exclamation point, exclamation point.

22 "I have every intention of moving
23 back to California, I just need a bunch of
24 credits on my resumé first. I need all of
25 the casting directors up in Vancouver to
26 know me first and cast me in something.
27 That way I can move back to L.A. and put
28 myself on tape for everything in Vancouver

1 like Luciana does. She can only do that
2 because they know her."

3
4 Since then there's been, on July 21st and
5 22nd, there's been text messages that Respondent has
6 sent to Petitioner, which have not been filed with the
7 court because it wouldn't have been timely, in which --
8 in sum, admits that the moves to Canada was for an
9 acting career and pleads with Petitioner for, quote,
10 "six more months." End quote, so she can get her
11 credits.

12 On July 21st, Petitioner asked Respondent,
13 "do you do you want to live in Canada forever?"

14 Respondent's answer, "no, not forever."

15 MS. RESNIK: Your Honor, I'm going to object.
16 I don't the know what he's reading from. I have never
17 seen these text messages or e-mails. It's certainly not
18 part of the pleading. And I object to foundation.
19 There's no basis for what Petitioner's counsel is
20 reading from. He's read from his own notes. I don't
21 even see the actual text messages.

22 MR. SALICK: July 21st and 22nd, it was after the
23 due date for the briefs.

24 MS. RESNIK: I don't --

25 MR. SALICK: I have copies for the court. I can
26 provide them to the court and counsel.

27 MS. RESNIK: Your Honor, I should not be ambushed
28 right now with new text messages the Petitioner's

1 counsel wants to all of a sudden introduce.

2 MR. SALICK: Your Honor, counsel received our
3 objection to her points and authorities. It was well
4 over the statutory limit. And she basically was able to
5 argue all of the points that were in her points and
6 authorities. So that pretty much defeats the purpose of
7 our objection and request to strike.

8 But, in any event, I won't recite the
9 further text messages.

10 THE COURT: Okay.

11 MR. SALICK: The argument made in our points and
12 authorities, and the cases that are in support of it
13 support Petitioner's contention that California has been
14 and has always been the child's home state.

15 The move to relocation to Canada was
16 temporary. It was a one-year term, as evidenced by the
17 one-year lease that was signed. As evidenced by the
18 text message attached as Exhibit A to Petitioner's
19 July 17, 2015 declaration.

20 The fact that Respondent is claiming that
21 Petitioner ambushed her, granted the filings in this
22 case have been voluminous, but in the -- I believe it
23 was the initial ex parte filed by Petitioner, which I
24 think was June 26th, 2015, there were text messages that
25 were attached to that, in which Respondent asked
26 Petitioner to serve her with divorce papers before she
27 leaves for Canada.

28 So this is not a surprise. She as a matter

1 of fact was jumping up and down when she got the divorce
2 papers served on her.

3 And if Respondent wants to talk about
4 delay, let's talk about the sequence of filings in this
5 case:

6 Petitioner files and serves his petition;
7 Respondent first files a declaration making a special
8 appearance, which was then subsequently followed up by
9 an actual response, which defeated the purpose of -- or
10 the motive behind filing a document in the form of a
11 special appearance.

12 Then we -- and then she -- after she files
13 her response here, what does she do? She goes to Canada
14 and files for divorce up there, which is now causing
15 delay in this case.

16 My client was personally served with the
17 Canada -- with the Canadian pleadings, I believe it was
18 July 6th, as evidenced by Respondent's brief. He has 30
19 days. So there is no intentional delay.

20 He now has to deal with the case up in
21 Canada, which was sprung upon him. And it is
22 unfortunate that Respondent's taking this position. And
23 arguing that it's my client who is delaying this case,
24 because the delay right now is the fact that he has to
25 respond to this Canadian action.

26 And, further, the Respondent amended the
27 divorce papers from Canada to only include a request for
28 custody and visitation up there. Thereby giving this

1 court jurisdiction over all other issues.

2 So, that just makes it that much more
3 complicated, and that much more burdensome on both
4 parties, because now they have two -- now Respondent is
5 requesting that the parties litigate in two different
6 jurisdictions.

7 With respect to Respondent's claim that
8 Petitioner will not allow her any meaningful contact;
9 when this court made its order that the child should be
10 immediately returned to California, at the hearing date
11 Respondent showed up. The minor child wasn't here. I
12 don't know if this court recalls, this court then
13 ordered Respondent to go back to Canada, bring the minor
14 child back to California, and bring the minor child to
15 court.

16 That was July 1st, if my recollection is
17 correct. Between the time of May 28th, 2015 when she,
18 under the guise that she wanted to take Hunter, their
19 son, to the park, she then -- and Hunter at that time
20 was -- while Petitioner was at work Hunter was being
21 cared for by Petitioner's mother and his friend. She
22 did not go to the park, instead she drove to the airport
23 and flew back to Canada.

24 So that is why my client's concerned about
25 leaving Hunter alone in Respondent's care and custody.

26 We lodged a -- I think it was about -- it
27 was over 100 pages of text messages on July 16th. In
28 those text messages, page after page, day after day,

1 illustrates Petitioner's offer, repeated offers to
2 Respondent to have visitation time with Hunter. But
3 when -- as long as he's present, because of this flight
4 risk.

5 Because she's a flight risk. She can gasp
6 all she wants and huh and puff, but it's true.

7 I mean, again, she claims she wants to
8 follow the court's orders but it took this court to make
9 an order on top of the initial order to, "Respondent you
10 really have to bring the minor child back to California.
11 I mean it."

12 Respondent had to provide this court with a
13 declaration, I believe it was by July 10th, setting
14 forth the information regarding the Canadian judge. We
15 never received -- from what Respondent -- or what
16 counsel is saying that there cannot be a judge assigned
17 until my client quote/unquote stops delaying and files a
18 response there, a judge won't be assigned.

19 But, we never got served with that type --
20 that declaration. The first notice we got of that fact
21 or that law for Canada was when we got on July 20th, the
22 declaration of her Canadian attorney.

23 So, I don't know if this court wants -- you
24 know, because I'm sure counsel is going to respond to my
25 arguments, we can keep going back and forth.

26 THE COURT: Well, if you can respond to what they
27 are ultimately asking, and I'm listening to what they
28 are ultimately asking for, we'll make a decision at that

1 time.

2 MR. SALICK: Thank you, Your Honor. With respect
3 to -- and I appreciate the guidance. Thank you.

4 With respect to the request that the court
5 lift the ATROs, as this court pointed out, we are still
6 right back where we were when the court ordered us to
7 come back on this day and made the briefing schedule.
8 There's been no communication with a Canadian judge. It
9 seems to be a necessary step for us.

10 Petitioner was -- he still is within the
11 30-day time limit to file the response. I believe after
12 today he has about six days left, so if this court is
13 inclined -- if the court is not going to grant
14 Petitioner's request that California be deemed the home
15 state for the minor child, then if the court needs
16 additional information from the Canadian court, then
17 this court could continue this matter and --

18 THE COURT: No, I don't need any additional
19 information. They are asking, I mean, their position is
20 I do not have jurisdiction, but can you make this order
21 and allow my client to go to Canada to move back to
22 Canada with the child.

23 And then once a judge is assigned in
24 Canada, my client will come back and we'll go from
25 there.

26 that's essentially what they're asking.
27 They're essentially, "you don't have jurisdiction,
28 Your Honor, but can you -- you don't have jurisdiction,

1 to go ahead and make this orders anyway, and essentially
2 going around the ATROs.

3 I need for you to address that point before
4 the court makes its decision.

5 MR. SALICK: Well, with respect to the -- first of
6 all, I don't believe Respondent has a legal basis to ask
7 that this court set aside circumvent the ATROs.

8 We still have the problem of jurisdiction
9 to deal with.

10 The fact that Respondent keeps bringing up
11 the Hague Convention, I believe that a Hague petition
12 needed to have been filed for that to kick in, and it
13 hasn't been filed.

14 THE COURT: Right.

15 MR. SALICK: It's not as if Respondent hasn't had
16 enough time.

17 We do believe she's a flight risk. And
18 with respect to the domestic violence restraining order
19 D.V. 100, which was filed by Petitioner on July 16th,
20 2015, there is ample evidence that Respondent has been
21 and continues to this day, harassing and making baseless
22 threats, making up court orders, threatening to report
23 my client to the IRS, threatening that she's going to
24 levy against my client's accounts.

25 She's been dragging us into court, which
26 results in my client missing work and results in me
27 unnecessarily incurring fees and costs to come to court
28 only to find that the ex parte was filed the day before,

1 which is just -- it's -- I'm beside myself with respect
2 to that.

3 I believe the evidence is ample with
4 respect to this court being able to find that the
5 relocation to Canada was temporary. It was -- there's
6 Exhibit A attached to Petitioner's declaration filed
7 July 16, 2015, clearly shows Respondent's intention was
8 to come back -- is to come back to come California, once
9 she gets her acting credits.

10 I think she's had a couple, according to
11 Petitioner, this is in his pleadings, a couple acting
12 jobs up there. That is not successful.

13 And, therefore, the trial period is over.
14 And that's when Petitioner, we argue, that's when
15 Petitioner decided that, hmm, no, I'm going to stay up
16 in Canada.

17 I'm going to stay up here and I'm going to
18 continue pursuing my dream and you have to support me.

19 THE COURT: Okay. Thank you.

20 Final word, then the court's going to make
21 a decision. So if you can be very brief.

22 MS. RESNIK: Your Honor, I think the Hague
23 Convention gives guidance with respect to what it means
24 to have a habitual residence or home state.

25 THE COURT: Well, that's not before this court.
26 No Hague was -- petition for Hague was submitted and
27 this, that's this Department 2, so we're not going to go
28 there.

1 MS. RESNIK: All right. I appreciate that,
2 Your Honor.

3 The reality is that my client has never
4 been a flight risk.

5 On May 26th my client e-mailed Petitioner
6 and his counsel explaining to them her understanding of
7 what the home state is and that she only has one home,
8 that the child only has one home, and that is in
9 Vancouver, Canada. And that she wants to return back.

10 The court specifically, initially first
11 gave sole legal, sole physical to Petitioner. Then
12 vacated those orders, gave primary to Respondent with
13 visitation to Petitioner. And then vacated those
14 orders.

15 To a point where right now we are in a
16 place where this court has only one option and that
17 option is to allow my client to return back to Canada,
18 the home state, where the child objectively has been
19 residing for the last 12 months, and allow this court to
20 continue this matter, pending the communication between
21 this court and the Canadian judge.

22 My client is not a flight risk. She
23 e-mailed on May 26th that she's planning on going to
24 Canada. That's in the e-mail.

25 More than that, she specifically --
26 Petitioner specifically knew where the child was
27 residing in Canada, and even e-mailed the landlord on
28 May 28th saying, "if Respondent and the minor child want

1 to remain in Canada, that's up to Respondent to pay
2 for."

3 He knew where she was at all times. And
4 yet he ran in here on June 5, claiming that she abducted
5 the child. He knew where the child was. She told him
6 that she was going to take the child, and then he
7 concocted an ex parte just to gain legal advantage.

8 More importantly, he has not given my
9 client any contact with the minor child with the
10 exception of two visits and a few Facetimes that has
11 essentially resulted in Petitioner depriving my client
12 of any rights to this child.

13 And this is his MO. This is what he's been
14 doing from day one, what he's been attempting to do from
15 day one, including filing the fraudulent declaration
16 under UCCJEA, which clearly was objectively wrong based
17 on all of the information that we've provided to this
18 court.

19 This court does not have jurisdiction. The
20 automatic restraining orders right now essentially mean
21 that the child has no contact with mom because
22 Petitioner de facto decided that that's going to be the
23 custody -- the de facto custodial arrangement.

24 And this is not in the child's best
25 interests. My client is not a flight risk. She was
26 served by mail with this court's order to return back
27 with the minor child.

28 When she got it, which was quite delayed in

1 Canada, she was in Canada, she was served in Canada, she
2 did return the minor child. This is where the minor
3 child is. And she has continued to come back for every
4 single hearing to date.

5 The minor child only has one passport. The
6 passport is currently with Petitioner. It's a U.S.
7 passport.

8 My client is simply asking that given that
9 Petitioner has financially cut her off, that she doesn't
10 have the ability to stay in Los Angeles, and the minor
11 child's residence has at all times been in Canada, in
12 all fairness she should be allowed to go back as the
13 primary caregiver of this minor child who is not a
14 flight risk, who has returned to this court, to return
15 back to Canada with the minor child, pending a future
16 hearing.

17 It should also be noted that preschool is
18 starting for the minor child on August 17th, in Canada.
19 It's been -- the parties put the child in -- my client
20 can represent this, that they put the child on a wait
21 list for this preschool. They finally accepted this
22 child. The child can start preschool August 17th.

23 Petitioner works full time. He admits that
24 he has a nanny caring for this child almost all the time
25 to allow him to work. And yet my client is sitting
26 available as stay-at-home mom without a child and no
27 ability to care for this child. This is not in the
28 child's best interests.

1 We respectfully request for the court to
2 allow my client to return back to Canada, the child's
3 home state, with the minor child. Pending the next
4 court hearing, my client will represent to this court
5 that she will absolutely, as she has, complied with any
6 and all orders that this court deems fit for purposes of
7 insuring the return.

8 MR. SALICK: Just really briefly.

9 THE COURT: Really briefly because the court is
10 going to make its ruling.

11 MR. SALICK: Thank you, Your Honor.

12 With respect to the court allowing
13 Respondent or with respect to Respondent's request to be
14 permitted to go back to Canada with the minor child,
15 while the court sorts the jurisdiction issue out, our
16 concern is that she'll go to Canada with the minor
17 child, and she might return, but there is nothing that
18 this court can do, I don't think so, to require her and
19 mandate her to bring the minor child back here. That's
20 one.

21 With respect to this -- we have already --
22 Respondent addressed the issue of her contention that
23 she has not had meaningful -- or my client's blocked her
24 from meaningful contact, it should be pointed out that
25 between May 28th and July 1st, May 28th is the date that
26 she took the child from California, under the guise that
27 she was going to go to the park, and went to Canada, to
28 July 1st, which is when this court ordered her to bring

1 the child to court, my client didn't have any contact
2 whatsoever with the minor child, and she didn't allow
3 him to have any contact with the minor child at all.

4 So if there's one party or one parent who
5 is more willing to provide contact to the other, it's
6 Petitioner. And that's evidenced by the over 100 pages
7 of text messages that were lodged with this court and
8 the pleadings.

9 THE COURT: Okay. Thank you.

10 MR. SALICK: Thank you, Your Honor.

11 THE COURT: Based on the court's review of the
12 respective points and authorities that counsel have
13 submitted, the court finds that California is the home
14 state of the child.

15 And it was represented to the court by the
16 Respondent that a case had been filed in Vancouver. And
17 the court waited to hear from the judge so that the
18 court could have a conversation. That has not happened.
19 There is a process for that to happen.

20 So, pursuant to Family Code 3421 no other
21 court has jurisdiction under paragraph -- pursuant to
22 Family Code section 2034, essentially no other court has
23 exercised jurisdiction.

24 And the court knows that the child was born
25 here and resided here two years before the move to
26 Canada, and based on the evidence presented, the court
27 finds that the move to Canada was a temporary move.

28 So the Petitioner did not abandon

1 jurisdiction, in California to be the home state. He
2 did not abandon that.

3 With respect to the request of the court to
4 lift the ATROs, that is denied.

5 The ATROs are very clear, and there has
6 been no authority cited to the court to lift
7 standardized ATROs, and the court is not going to make
8 up law and lift those ATROs.

9 The one that is relevant here, it says here
10 starting immediately, spouse or domestic partner are
11 restrained from, one, removing the minor child of the
12 parties from the state or applying for a new or
13 replacement passport for those minor children without
14 the prior consent of the other party or an order of the
15 court.

16 So at this time, the court is going to make
17 custody orders. This court has jurisdiction to make
18 child custody orders in this case. Under the uniform
19 child custody and jurisdiction and enforcement act.
20 California Family Code section 3400 through 3465,
21 responding party is given notice and opportunity to be
22 heard as provided by the laws of the State of
23 California.

24 The country of residence of the child is
25 the United States of America.

26 With respect to legal custody, the court is
27 granting joint legal custody, this means mother and
28 father, both parents share the right and responsibility

1 of making decisions regarding the child's health,
2 education and welfare.

3 With respect to physical custody, the court
4 is granting physical custody, sole physical custody and
5 primary physical custody to the Petitioner who is the
6 father.

7 The court is granting visitation to the
8 mother. And with respect to visitation orders, that the
9 court is going to make -- and these are temporary
10 orders, every weekend from Friday until -- from Friday
11 until -- Friday after school, pickup after school, and
12 if there is no school -- 10:00 A.M., until Monday
13 morning drop off at school. And if there is no school,
14 drop off at Petitioner's home at 10:00 A.M..

15 And unlimited skype, texts, telephone
16 communication with the child, unlimited means Monday
17 through Sunday, during the times that the mother is not
18 present visiting with the child. And during those --
19 during that time period, the time for the skype or text
20 or telephone calls between the hours of 7:00 P.M. --
21 strike that, between 6:00 P.M. and 7:00 P.M..

22 The following are additional orders that
23 the court is going to make:

24 222, each party shall advise the other of
25 his or her current address, place of employment and
26 phone number, and shall advise the other of any changes
27 as soon as reasonably possible.

28 223, each party shall advise all schools

1 and health care providers of the name, address, and
2 phone numbers of the other party in any registration
3 enrollment emergency notifications or other forms in
4 which family information is requested.

5 224, each party shall provide the other
6 within a reasonable period of time with copies of all
7 schedules of school and extra-curricular activities;
8 consume report cards; progress and special reports;
9 medical reports and health care instructions regarding
10 the minor child.

11 225, each party shall advise the other
12 within a reasonable period of time prior thereto of all
13 school and extra-curricular activities of the minor
14 child in which parents are invited or allowed to observe
15 or participate;

16 226, each party shall advise the other
17 within a reasonable period of time prior thereto of any
18 medical and mental health treatment or evaluation of any
19 minor child, including the name and address of the
20 provider of such services.

21 227, in emergency situations either party
22 may authorize necessary health care, treatment and
23 procedures for the minor child, and such party shall
24 notify the other thereof as soon as reasonably possible.

25 230, neither party shall change the
26 residence of the minor child from the State of
27 California and from the county of Los Angeles without
28 the prior written consent of the other party or prior

1 order of the court.

2 232, a party who is unable to assume
3 responsibility for the care of the minor child during
4 any scheduled period of custody for that party is
5 responsible for making adequate alternative arrangements
6 for the care of such child.

7 233, with respect to the scope of joint
8 legal custody, this includes the rights to make
9 decisions that the parties shall share relating to the
10 health, education and welfare of the minor child,
11 including but is not limited to:

12 One, enrollment or termination of
13 attendance in any public or private school;

14 Two, participation, in regularly-occurring
15 extra-curricular activities;

16 Three, non-emergency medical, dental
17 and/orthodontic treatment, other than routine check ups;

18 Four, participation in mental health
19 counseling, therapy or treatment;

20 Five, changing area of the child's
21 residence;

22 Six, issuance of a driver's license.

23 Seven, issuance of a passport.

24 Eight, participation in religious studies,
25 observations and/or practices.

26 With respect to travel, 261, neither party
27 shall travel outside the United States of America or
28 California, with the child, with the minor child without

1 written consent of the other or the order of this court.

2 262, neither parent shall schedule any
3 extra-curricular activities for the minor child during
4 the other parent's custodial time without the other
5 parties consent. Regarding the visitations to the
6 mother, all visitations are to take place in
7 Los Angeles, California, unless otherwise by stipulated
8 agreement between the parties.

9 Those are the orders of the court. Counsel
10 for the Petitioner to prepare the orders after hearing.

11 MR. SALICK: Your Honor, as I see the court was
12 looking at the -- or seemed as if it was going off the
13 carbon copy of the core stipulation. Number 228,
14 prohibits each party from making derogatory statements
15 about the other party in the presence of the minor
16 child. Can the court adopt that one as well, please?

17 THE COURT: Okay, I haven't heard any evidence of
18 that, but I will.

19 228, neither party shall make derogatory
20 nor disparaging remarks about the other to or in the
21 presence of the or within the hearing of the minor
22 child.

23 Okay. So we're in recess until 1:30.

24 THE CLERK: Your Honor, there's also a restraining
25 order hearing in this case.

26 THE COURT: A restraining order hearing in this
27 case?

28 MR. SALICK: Well -- we'll allow it to go off

1 calendar.

2 THE COURT: Okay. This is off calendar by moving
3 party.

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6 (Proceedings concluded.)

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