No. 13-_____

IN THE

Supreme Court of the United States

JAMES LATIMER,

Petitioner,

v.

DEVIN HUDSON, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals Fifth District of Texas at Dallas

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. §§ 1901-63 applies, with two express exceptions, "In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved". Despite that fact, many state courts of last resort, and countless state appellate courts in this country have been called upon, year after year, throughout the 35 year history of the Act, to decide a single question of Federal law. That question has involved hundreds of custody disputes to date and a significant number of Indian children each and every year. It is one of the most important questions which this Honorable Court will ever decide regarding the ICWA, and one which all Indian children, families, and tribes have needed a conclusive answer from this Court on for the past 35 years:

(1) Does the Indian Child Welfare Act apply to an involuntary child custody proceeding involving an Indian child, between biological parents and a third party non-parent?

As a separate issue, Petitioner also presents the following question:

(2) Does awarding conservatorship of a child to a third-party non-parent, over the objections of a biological parent and without a finding of parental unfitness, unconstitutionally infringe upon "the interest of parents in the care, custody and control of their children"?

LIST OF PARTIES

James Latimer is the petitioner in this case, was the appellant in the court of appeals, and was the petitioner in the Supreme Court of Texas.

Devin Hudson is the Respondent in this case, was the appellee in the court of appeals, and was the Respondent in the Supreme Court of Texas. He is erroneously referred to as "stepfather" in the court of appeals' opinion, although he and Mother have never been married and have not been in a relationship since before this case began.

Tasha Swadley (Mother) is also a Respondent, but did not participate in the court of appeals or the Supreme Court of Texas proceedings, and is not expected to participate in the proceedings before this Honorable Court.

The Choctaw Nation of Oklahoma was denied its statutory right to intervene, pursuant to Section 1911(c) of the ICWA and, therefore, by technicality, is not a party to this proceeding.

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The opinion of the Fifth Court of Appeals, Dallas, Texas, is reported at 378 SW3d 542 (Tex. App. 2012). App. 1a. The decision of the 296th District Court of Collin County, Texas is unpublished. App. 22a.

JURISDICTION

The Court of Appeals Fifth District of Texas at Dallas affirmed the decision of the 296th District Court of Collin County, Texas on August 20, 2012. App. 1a. Petitioner then timely filed a Petition for Review in the Supreme Court of Texas, which was denied on January 18, 2013. Subsequently, Petitioner timely filed a Motion for Rehearing in the Supreme Court of Texas, which was denied on April 19, 2013. App. 60a. This court has jurisdiction under 28 U.S.C. §§ 1257(a).

STATUTORY PROVISIONS INVOLVED

Section 1903(1)(i) of Title 25, U.S.C. states: "For the purposes of this chapter, except as may be specifically provided otherwise, the term - (1) "child custody proceeding" shall mean and include - (i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated."

Section 1903(1)(iv) of Title 25 U.S.C. states, in relevant part: "Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents."

Section 1912(a) of Title 25, U.S.C. states: "In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding."

Amendment XIV, Section 1 of the United States Constitution states: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the

State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article VI, Clause 2 of the United States Constitution states: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

STATEMENT

How many Indian children must be ripped away from their families and be forced to endure the irreparable emotional and psychological harm which results from losing the only two people which matter to the child, its mother and father, before this Honorable Court steps in and puts a stop to lower courts all over this country abusing their discretion and carving out impermissible judicially created exceptions to coverage of the Indian Child Welfare Act?

Is it ten children? Maybe it's one hundred. How about one thousand? When do we get to the one child who matters enough to get the attention of this court?

How many cases are necessary for action to finally, mercifully be taken? Precisely how many trial courts, appellate courts, and state courts of last resort must disagree with each other before we have enough to call it a "significant split"? What exactly constitutes a significant split anyway? How many cases, where state courts disagree with each other on whether they should continue to destroy people's lives, must there be before not one single little Indian girl or boy will ever again have to know what it's like to cry themselves to sleep because they miss their mommies and daddies, and just want to go home?

That's too many.

My little girl has waited for four long years to come home. Many other precious children have waited far longer, often in vain. The 5.2 million members of the 565 federally recognized tribes of this country have waited for over 35 years for this Honorable Court to finally step up to the plate and say "Enough, no more".

You have a responsibility, an obligation, just as the United States and Congress do, to protect these children:

> "Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources...there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and...the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe." "Congress has declared that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families." 25 U.S.C. § 1901, 1902.

That extremely important responsibility is no less a responsibility of this court than it is of Congress and the United States.

Every single year, there are countless cases just like this one where state courts fail to apply the ICWA to the facts of a particular case by judicially creating impermissible exceptions to coverage.

This court will address one of the two main judicially created exceptions, the so-called "Existing Indian Family" exception, in *Adoptive Couple v. Baby Girl*, 731 S.E.2d 550 (S.C. 2012), cert. granted, 133 S. Ct. 831 (2013) (No. 12-399), so I will not continue those arguments here.

No less important than the "E.I.F", are the other main exceptions used by scores of state courts in this country, the "intra-family" exception, and the exception used in cases which do not involve a state agency, both of which the appellate court makes reference to in this case, by stating in its opinion that Respondent Hudson argued them at that stage, and by and through the following erroneous reasoning: "The ICWA was primarily intended to apply only to situations involving the attempts of *public and private agencies* to remove children from their Indian families, not to inter-family disputes or divorce proceedings". App. 3a.

(Of course, one third of the court's reasoning is correct: We all know that divorce proceedings are expressly exempted from coverage, as are delinquency proceedings.)

The court has also created a fourth exception of sorts, by reasoning that "Based on the common everyday meaning of temporary and placement", Respondent Hudson's petition did not seek "temporary placement" of our child. (*Id.* at 6a.) despite the fact that Respondent Hudson initially sought, and received, temporary orders which made him the "temporary joint managing conservator" of our child from precisely April 29, 2009, to July 28, 2011. Regardless of any pleadings, it is without question that a "temporary placement" initially occurred in this case and endured for 2 years and 3 months.

(All of this notwithstanding that application of the ICWA is triggered immediately and automatically "in any involuntary proceeding in a State Court, where the court knows or has reason to know that an Indian child is involved" and is at that point required to provide appropriate notice. 25 U.S.C. § 1912(a).)

The so-called "intra-family dispute" exception came about from a 1980 Montana case entitled *In re Bertelson*, 617 P.2d 121 (Mont. 1980) and, as such, is commonly referred to by the courts which use it as simply "the Bertelson Analysis". That court excluded a custody dispute between the mother and the paternal grandparents, finding that it was not a child custody proceeding because the Act is not directed at disputes between Indian families regarding custody of Indian children; rather, its intent is to preserve Indian cultural values under circumstances in which an Indian child is placed in a foster home or other protective institution. Courts in Wisconsin (*In re Sengstock*, 477 N.W.2d 310 (Wis. Ct. App. 1991)) and Texas (*Comanche Nation v. Fox*, 128 S.W.3d 745 (Tex. App. 2004)), as well as many others, have adhered to this judicially created exception to coverage for the last 33 years.

Although there are quite a few state courts, appellate courts, and state courts of last resort who rely on the Bertelson analysis, many other courts have expressly rejected it as being contrary to the plain language of the ICWA, and contrary to the express provision of the Act enumerating which proceedings are excluded; specifically, certain

juvenile delinquency and divorce cases. All other proceedings involving the custody of an Indian child are covered by the Act. 25 U.S.C. § 1903(1)(iv).

In *A.B.M. v. M.H. & A.H.*, 651 P.2d 1170, 1173 (Alas. 1982), the Supreme Court of Alaska stated the following:

> "We decline to follow In re Bertelson, which concerned a custody dispute between the natural mother and grandparents of an Indian child. The Bertelson court categorized the conflict as "an internal family dispute" and held that the Indian Child Welfare Act was not intended to cover such proceedings. We find such interpretation contrary to express provisions of the Act...The language of the Act makes no reference to exceptions for custody disputes within the extended family...Congress explicitly excluded certain proceedings from the protections of the Act. In section 1903(1) the definition of "child custody proceeding" specifically excludes custody disputes resulting from divorce proceedings between parents of an Indian child and placements of Indian children resulting from juvenile delinquency actions. It is clear, then, that there were certain internal family disputes which Congress intended to except from the provisions of the Act. These exceptions

> were clearly expressed and we find no compelling basis for implying any others."

A Washington court of appeals case, *In re S.B.R.*, 719 P.2d 154 (Wash. Ct. App. 1986), reasoned:

> "The language of the Act makes but two exceptions; it does not apply to the custody provisions of a divorce decree nor to delinquency proceedings. 25 U.S.C. § 1903(1) (1983). A basic rule of statutory construction is that express exceptions in a statute exclude all other exceptions. *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616-17, 100 S.Ct. 1905, 1910, 64 L.Ed.2d 548 (1980); 2A Statutes and Statutory Construction § 47.11, at 145 (Sands 4th Ed. 1984 rev.); see also *A.B.M. v. M.H. & A.H.*, 651 P.2d 1170, 1173, (Alas.), cert. denied, 461 U.S. 914, 103 S.Ct. 1893, 77 L.Ed.2d 283 (1982); *People in the Interest of S.R.*, 323 N.W.2d 885 (S.D.1982)."

As well, there are many cases where state courts refuse to apply the ICWA to cases between biological parents and non-parents, reasoning, as the appellate court did in the present case, that a "custody proceeding between private parties" shouldn't be covered.

As illustrated by these few cases, which are merely the tip of the iceberg, the split over the application of the ICWA to "intra-family" disputes, and disputes which do not involve state agencies, but are disputes between so-called "private parties" have been going on for almost four decades, and this is now such an intolerable situation that it practically screams for this court's attention.

Finally, in reference to my second question presented, this Honorable Court has stated in *Troxel v. Granville*, 530 U.S. 57 (2000), that "The liberty interest at issue in this case--the interest of parents in the care, custody, and control of their children--is perhaps the oldest of the fundamental liberty interests recognized by this Court." In *Quilloin v. Walcott*, 434 U.S. 246 (1978), this court stated that it would have little doubt that the Due Process Clause would be offended "if a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest".

I realize this is an error correction point, which I'm told this court may not be interested in, but the rulings of this court in this area have been consistent for the last century, and they indicate that no court in this country may deprive an American citizen of the care, custody, and control of their child without a finding of parental unfitness. To do so is constitutionally offensive and, therefore, unlawful, as it *should* be.

A. Statutory Framework

In 1978, after well over four years of hearings, deliberation, and debate, as well as hundreds of pages of legislative testimony, the United States Congress approved the Indian Child Welfare Act of 1978 (ICWA) in response to the alarmingly high percentage of Indian children who were being separated from their families and tribes and placed in non-Indian homes and boarding schools by non-tribal government agencies, State courts, and private agencies. The legislative hearings, as well as the evidence and testimony obtained during those years, confirmed for Congress that many State and county social service agencies, with the approval and backing of many State courts and some Federal Bureau of Indian Affairs officials, had engaged in the systematic, automatic, and across-the-board removal of Indian children from Indian families and into non-Indian families and communities. *Mississippi Band of Choctaw Indians v. Holyfield*, 490 US at 32-33.

> "Studies undertaken by the Association on American Indian Affairs in 1969 and 1974, and presented in the Senate hearings, showed that 25 to 35% of all Indian children had been separated from their families and placed in adoptive families, foster care, or institutions...Approximately 90% of the Indian placements were in non-Indian homes." *Id.* at 32-33.

During the hearings, Calvin Isaac, the Tribal Chief of the Mississippi Band of Choctaw Indians, testified as follows:

> "Culturally, the chances of Indian survival are significantly reduced if our children, the only real means for the transmission of the tribal heritage, are to be raised in non-Indian homes and denied exposure to the ways of their People. Furthermore, these practices seriously undercut the tribes' ability to continue as self-governing communities. Probably in no area is it more important that tribal sovereignty be respected than in an area as socially and culturally determinative as family relationships. *Id.* at 34 (quoting *Indian Child Welfare Act of 1978, Hearings before the Subcommittee on Indian Affairs and Public Lands of the Committee on Interior and Insular Affairs, House of Representatives*, 95th Cong, 2d Sess, at 193 (Feb. 9 & Mar. 9, 1978). The 1978 Hearings, at 193. See also *id.* at 62."

The documentation and testimony presented before Congress compiled a painful and tragic history of the devastating effect governmental policies and actions toward Indian children were having, not just on the children themselves, but on the larger tribal communities from which they were taken. As a result of the policies and practices of

State courts and State social service agencies, as well as Federal Indian boarding and mission schools, vast numbers of tribal children had been raised and educated by non-members and non-Indians. With so many children no longer living within their own families or interacting with their tribes, a real threat emerged that the very heart of many tribes' cultural heritage would be lost or forgotten. For if kin relations and the duties, obligations, and expectations that surround those relations constitute the fundamental ways in which tribal customs and traditions are expressed and exercised, what would happen if those kin relations were never learned or experienced by tribal children?

This was precisely what was happening to children who were separated from their families and forced to live in non-Indian homes and boarding schools.

Throughout tribal communities, there was a fear that these policies and practices of targeting Indian children and raising them outside of their cultural heritage would ultimately spell the death of many tribal societies, beliefs, languages, and communities.

The cost to the children themselves, and the emotional and psychological harm which they would endure, would be equally devastating. Indian children who grow up away from their Indian families and tribes often feel that they don't belong anywhere at all. Having been a part of, but outside, a culture which isn't theirs for the entirety of their lives, while finding they don't fit in with their own culture, effectively robs them of any identity

whatsoever. This is only one part of a much larger set of problems which have been referred to as "Lost Bird Syndrome", by some and "Split Feather Syndrome", by others.

Congress, in passing the ICWA, also essentially acknowledged the premise that an Indian child's citizenship within the tribe is a valuable right to be protected for the child. Many tangible and intangible benefits flow from citizenship, many people have strong identity based on citizenship, and benefits and responsibilities flow between the sovereign and the citizen. The sovereign has an interest in the welfare of each of its citizens. An Indian child's rights as articulated in the ICWA are not based simply on race or cultural considerations, they are based on the political relationship that exists between the government of the United States and each of the recognized tribes. According to the law, these tribes are considered domestic, dependent nations and, as such, have a special relationship with the Federal government that transcends the relationship of States to other citizens of each State. Each Indian child has an interest in his or her tribe, and each tribe has an interest in each of its children. The ICWA is designed to prevent inappropriate interference with this relationship.

The ICWA imposes a federal standard on all states which decrees that the best interests of Indian children are served by protecting "the rights of the Indian child as an Indian and the rights of the Indian community and tribe in retaining its children in its society." *Id.* at 37.

In summation, the Indian Child Welfare Act was enacted to protect the separate and distinct legal rights of (1) Indian parents, (2) Indian children, and (3) Indian tribes, and to insure the survival of Indian tribal culture and heritage, as well as to protect the Indian children from the serious and irreparable emotional and psychological harm which certainly results from their being separated from their own families, tribes, and cultures.

B. Factual Background

E.G.L. was born in late 2002. Months before, Mother and I had already started planning and preparing for her arrival by taking birth and parenting classes, so that we would be prepared for what was to come and so that, once she arrived, she would already have everything she needed. We bought baby clothes and other things, and prepared a room in our home with all of the things she could possibly need. It was completely adorned in everything related to "Winnie the Pooh". We were very happy and excited, along with her big brother, to finally welcome her into our family.

The day she was born was one of the happiest days of my life. I was the first one to hold her when she was born. I carried her over to the table where the nurses cleaned her off, while she held my finger in her tiny little hand. When she opened her eyes for the very first time, I was the first thing she saw. I kissed her on the forehead and carried her to see her mother. The next day, we left the hospital and started our lives together. I was so happy to finally

have her here, after waiting for her for so long. Finally, we were together and all was right with the world. It was perfect.

Unfortunately, things were not meant to be perfect for very long. When she was only two months old, her mother began a relationship with someone outside of our own. She left and took the child, after lying to the police and getting a protective order, in order to keep me from getting custody of the child, as I had told her that I would fight her for custody if she took the child away. I worked things out with mother, so that I could be a part of my child's life, and they came back home after a few days.

For the next three years of her life, she lived with me and was a very happy, normal little girl with a normal life. We spent all of our time watching Barney, playing together, reading, and going to the rodeo. She loved it there. Before the events, I would ride around with her on one of the older horses, and we would go into the stalls together and pet all of the others when I wasn't riding. We had a great life, and no child was more loved and happier than she was.

In 2005, all of that changed. Mother once again began a relationship outside of our own, this time with Respondent Hudson, and when this was discovered, she left and took my little girl from the only home and family she had ever known. I once again told her that I would fight for custody of my little girl, and once again she lied to the police and told them that I had threatened her, in order to keep me from getting custody of the child, knowing that

no court would give her to me with a protective order in place. As a result, I was precluded from being anywhere near our little girl for over two years.

From the end of 2007, when I would have been able to see her again, until this case began in March of 2009, I barely ever knew where she was, as her mother moved from place to place at least 17 times, partly in order to keep from being served with a child custody suit, which I never had the ability or the money to pursue. (Not that it would have done any good anyway.) I saw my baby only a handful of times during that year and three months, despite making every effort to find her and to see her.

C. Proceeding Below

1. In March of 2009, Respondent Hudson, whom mother had previously been living with off and on until a few months prior to this action, and with whom she had since produced another child, filed suit in the 296th District Court of Collin County, Texas, to establish parentage and to be appointed the sole managing conservator of both his child, and mine, both of whom were legal residents of Dallas County, Texas at the time.

Our first appearance was a temporary orders hearing on April 29, 2009. The court, and all parties, were given written notice that an Indian child was involved, and that it was precluded from proceeding by section 1912(a) of the ICWA, which states, in relevant part:

> "In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention...No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary".

The judge stated "The Court is not accepting jurisdiction at this time over [E.G.L.]..." (RR Vol. 2, Pg. 25), and proceeded to hold the temporary orders hearing. During that hearing, the parties were forced to come to an agreement for temporary orders (which did not comply with section 1913 of the ICWA), under duress:

> "Or I got this idea. I can call CPS right now, down here and we can take all of the kids, okay? (RR Vol. 2, Pg. 110) I will call CPS in right now, remove all of your kids, we will open up a CPS case and we will see how that works...So how do you like them apples?...Do you like that? Because that's my next step. How do you like

> them apples? (*Id.* at 111.) So what I want you to do, if y'all can handle it, is to go in a room and figure it out, okay? Because my -- y'all know what my next option is, right? (*Id.* at 113.) Well, y'all figure it out, okay?...And you know and understand the options if you don't settle." (*Id.* at 115.)

The temporary orders were then given, which made Respondent Hudson the temporary joint managing conservator of our child from April 29, 2009 to July 28, 2011...temporarily placing her in his legal and physical custody until the final order was issued. This agreement was rescinded once it was safe to do so, in writing. (CR 308, 429, 897.) A motion to recuse and a formal complaint to the Texas State Commission on Judicial Conduct were filed as a result.

The judge initially refused to apply the ICWA, saying simply "Because they are not reservation residents, that's kind of why it is outside of the Indian -- the federal statute, okay?" My response was "I believe that the federal statutes do not require me to live on a reservation in order for this act to take effect, Your Honor", to which the judge replied "Well, I disagree with you". (RR vol. 2, pg. 102)

2. The Choctaw Nation of Oklahoma was finally given notice, over fourteen months late, and on December 13, 2010, a hearing was held on Respondent Hudson's motion to strike their

intervention. During that hearing, the judge finally admitted:

> "The Indian Child Welfare Act does apply...I have to apply certain standards when it comes to custody, and it does apply...the Indian Child Welfare Act does apply to the degree it requires me to apply a different standard to placement of a child or custody of a child...I have a different burden when I am giving an Indian child custody and I have to apply a different legal burden, and I have intended to do that at final trial. In temporary orders -- I have made temporary orders; but at the jury trial, we will apply that standard." (RR vol. 4, pgs. 5-10)

After declaring that the ICWA applied and that he would comply with its provisions, the judge then denied verbal motions to return the child to us pursuant to section 1920, and to comply with the required placement preferences in section 1915, stating "I make the law in this court". (RR vol. 4, pg. 10) The tribe's statutory right to intervene at any point in the proceedings, pursuant to section 1911(c) of the ICWA was then denied.

3. A jury trial was held on June 6, 7, and 8, 2011. Despite the trial court judge's earlier admission that the ICWA applied and that he intended to apply it at trial, he refused to apply the ICWA and precluded

me from even mentioning it to the jury or during cross examination of the witnesses. The opposition and the witnesses told the most horrible lies they could think of about me, and the jury ruled in Respondent Hudson's favor, based on nothing else. Respondent Hudson was named a joint managing conservator of our little girl, with the exclusive right to designate her primary residence. App. 25a, 30a.

4. I filed our notice of appeal with the Court of Appeals Fifth District of Texas at Dallas on July 5, 2011, alleging, as I had throughout the proceedings in the trial court, violations of the ICWA and of Amendment XIV of the United States Constitution, as well as others. The court of appeals affirmed the judgment of the trial court on August 20, 2012. *Id.* at 22a.

5. Our petition for review was filed with the Supreme Court of Texas on November 15, 2012. They denied the petition on January 18, 2013. *Id.* at 62a. Our motion for rehearing was filed on January 30, 2013, and the court actually seemed to be considering granting it. The clerk of the court said she had never seen the court formally ask for a reply on a motion for rehearing. Respondent Hudson's reply contained nothing more than the copied and pasted lies which were told at trial and which were parroted by the appellate court in its opinion. Our motion for rehearing was then denied on April 19, 2013. *Id.* at 62a.

REASONS FOR GRANTING THE PETITION

The Court of Appeals Fifth District of Texas at Dallas has arbitrarily decided that the ICWA will "apply only to situations involving the attempts of *public and private agencies* to remove children from their Indian families". *Id.* at 3a.

Furthermore, they have chosen to assert that a temporary order, which appointed Respondent Hudson a "temporary joint managing conservator" of our little girl from April 29, 2009 to June 8, 2011, is not a "temporary placement in the home of a...guardian or conservator" for the purposes of application of the ICWA. *Id.* at 7a. This effectively precludes the application of the ICWA to all future child custody proceedings of this particular type. If a temporary order does not constitute a temporary placement, and a final order constitutes a permanent placement, then the ICWA never applies to these cases, and the law is rendered meaningless, which is wholly inconsistent with Congressional intent.

They also state that the law does not apply because this is somehow an "inter-family" dispute. *Id.* at 3a. Not that there is anything in the plain language of the law which states that an "inter-family dispute" is excluded from coverage, but no party to this case is a family member of any other party.

They have added themselves to a growing number of state courts in this country who are, more and more, abusing their discretion by finding ways to wriggle out of correctly applying the law to the facts of these cases, as they absolutely should be doing.

There are many cases where state courts have attempted to circumvent the law in this manner in at least 20 different states, by using the "intra-family dispute" exception, by not applying the ICWA to cases between biological parents and non-parents, and by refusing to apply it to disputes which do not involve a state agency. (Again, I do not address the "Existing Indian Family" exception, which this court will address in the "Baby Girl" case.)

At least 7 state courts of last resort have decided these issues, even though some, like the Supreme Court of Texas, obviously refuse to hear them at all. The real truth of the matter is that these are only the cases which we know about. The vast majority of these cases will never even see an appellate court, and they certainly will not go to the state court of last resort. Most of the people harmed by these courts not applying the ICWA are poor and uneducated, and do not possess the means to take the fight for their precious children very far. If the true number of cases where trial courts refuse to follow the ICWA because of one of these impermissible exceptions were known, it would probably be staggering.

Westlaw obviously doesn't compile trial court decisions, but every single appellate court case and state court of last resort case in their database which involves these issues represents a case where a lower court has engaged in the impermissible creation of an exception to coverage of the ICWA, and the higher court has been called upon to decide the issue one way or the other.

Indian families continue to be destroyed by this unnecessary and tragic situation, year after year, even so long after Congress attempted to help us by putting these protections into place. More than 35 years after the ICWA was implemented, state courts should not still be required, or *allowed*, to decide these issues regarding the application of a federal act, year after year. Mothers, fathers, and children are still, to this very day, finding themselves in situations where state courts are divesting them of their rights, and their children, at will. The law is no good if it doesn't protect you because the people who have the power, and who are charged with upholding it, either refuse to abide by it or simply choose to distort its purpose under the thin veil of "statutory interpretation".

Only this court can decide these issues once and for all, so that we can finally have nationwide uniformity in the application and coverage of the ICWA, as was obviously intended by Congress, and so that no Indian child ever has to be taken from its parents and made to suffer for years while we fight the same fight over and over again.

I. STATE COURTS HAVE BEEN IN HOPELESS DISAGREEMENT OVER THESE ISSUES INVOLVING THE APPLICATION OF THE ICWA FOR 33 YEARS

As explained earlier in my "statement" section, in 1980, 33 years ago, the Montana Supreme Court decided a case styled *In re Bertelson*, 617 P.2d 121 (Mont. 1980), in which they judicially created an impermissible exception to coverage of the ICWA, commonly referred to as "the Bertelson Analysis", that not only has endured to this very day, but has grown into a chasm which has swallowed up countless Indian children and their families through its application in state courts throughout this entire country.

Since that time, state courts have continued to use the Bertelson Analysis, and other judicially created exceptions to applicability, in order to improperly exclude cases from coverage of the ICWA.

A Texas appellate court, in *Comanche Nation v. Fox*, 128 S.W.3d 745 (Tex. App. 2004), stated: "Indeed, the Act's congressional findings reveal the intent that it apply only to situations involving the attempts of *public and private agencies* to remove children from their Indian families, not to inter-family disputes or divorce proceedings." (Emphasis added.)

The Supreme Court of Kansas, in *In the Matter of the ADOPTION OF BABY BOY L.*, 231 Kan. 199, 643 P.2d 168 (Kan. 1982), refused to apply the ICWA

to a dispute between mother, father, and an adoptive couple for several reasons, among them:

> "The Indian Child Welfare Act of 1978 principally applies to cases where a *state court or agency* attempts to remove an Indian child from his or her Indian home on grounds of alleged incompetence or brutality of parents...The Act is concerned with establishing proper definitions and safeguards in the situation where Indian children are being removed from their families by reason of *child neglect, abuse, or similar grounds*." (Emphasis added.)

The supreme Court of North Dakota in *Schirado v. Foote*, 136, 785 N.W.2d 235 (N.Dak. 2010), refused to apply the ICWA to a dispute filed in the tribal court, involving mother, father, and non-parents (grandparents), stating: "[T]he ICWA is not applicable because this case concerns an *initial custody determination*; a proceeding outside the purview of the ICWA." (Emphasis added.)

The Supreme Court of Alaska, in *J.W. v. R.J.*, 951 P.2d 1206 (Alaska 1998), applied the ICWA to dispute between father and stepfather, but refused to apply certain sections: "The purposes behind ICWA are consistent with restricting § 1912(e) to disputes between persons having favored status-parents and Indian custodians-and others who are neither parents nor Indian custodians. There would

appear to be no logical reason consistent with the statutory purpose to apply § 1912(e) in a contest *between two equally favored contestants*. We therefore hold that if the stepfather proves on remand that he is S.R.'s Indian custodian, § 1912(e) will not apply and the superior court should instead apply the Alaska standard for custody disputes between parents and non-parents..." (Emphasis added.)

Earlier, in my "statement" section, I gave the examples of, and quotes from, the Supreme Court of Alaska case: *In A.B.M. v. M.H. & A.H.*, 651 P.2d 1170, 1173, (Alas.), cert. denied, 461 U.S. 914, 103 S.Ct. 1893, 77 L.Ed.2d 283 (1982), and the Washington court of appeals case, *In re S.B.R.*, 719 P.2d 154 (Wash. Ct. App. 1986). Here are a few of the other cases where higher courts have had to address the various judicially created exceptions to coverage of the ICWA which are continuously being used by trial courts all over the country: *Comanche Indian Tribe of Okla. v. Hovis (Hovis I)*, 847 F. Supp. 871 (W.D. Okla. 1994); *D.J. v. P.C.*, 36 P.3d 663 (Alaska 2001); *J.W. v. R.J.*, 951 P.2d 1206 (Alaska 1998); *In re D.A.C.*, 933 P.2d 993 (Utah Ct. App. 1997); *In re Q.G.M.*, 808 P.2d 684 (Okla. 1991); *In re A.K.H.*, 502 N.W.2d 790 (Minn. Ct. App. 1993); *In re Jennifer A.*, 127 Cal. Rptr. 2d 54 (Ct. App. 2002); *In re Lindsay C.*, 280 Cal. Rptr. 194 (Ct. App. 1991); *In re Crystal K.*, 276 Cal. Rptr. 619 (Ct. App. 1990). Another court applied ICWA without deciding the intra-family issue because of the parties' implicit assumption that ICWA applied to the situation: *In re Anderson*, 31 P.3d 510 (Or. Ct. App. 2001). See also:

In re Mahaney, 146 Wash.2d 878, 51 P.3d 776 (Wash. 2002); *In re Custody of C.C.M.*, 149 Wash. App. 184, 202 P.3d 971 (Wash. Ct. App. 2009); *In re Adoption of S.S.*, 167 Ill.2d 250, 657 N.E.2d 935, 212 Ill.Dec. 590 (Ill. 1995).

This has been going on for almost four decades, and it has to stop. Only this Honorable Court can decide these important questions of Federal law and, at long last, bring nationwide uniformity to its application.

II. THE ISSUES PRESENTED IN THIS CASE ARE OF THE UTMOST IMPORTANCE TO EVERY SINGLE INDIAN CHILD, INDIAN PARENT, AND INDIAN TRIBE IN THIS COUNTRY

There are over 5.2 million members of at least 565 federally recognized Indian tribes in the United States. Every single one of the children who are a part of that group, and millions more who aren't members, but who are eligible for membership, are subject to the ICWA provisions. Every single one of them could, at any time, be the subject of a child custody proceeding, and could be torn away from their families, in violation of the law, simply because a state court judge has no direction from this court and makes the wrong decision regarding application of this Federal Act.

Every single one of these millions of parents could lose the one thing in the entire world that means anything at all to them, just as I, and so many others

before me, have lost our precious children. It happens every single day in this country, year after year.

Every single one of these tribes will lose more of its children and have no way to pass on their history, language, and culture to the next generation, essentially leading all of them to their inevitable end. Congress passed this law to stop all of these things...to stop a *genocide*, which has been occurring for the last 500 years...but it was a worthless effort if the courts can ignore the plain language of the law at will and interpret it in any way they wish, absent any nationwide uniformity, because they have no direction from this court.

III. CONGRESS INTENDED THE ICWA TO HAVE NATIONWIDE UNIFORMITY AND DID NOT INTEND FOR STATE COURTS TO DECIDE THE APPLICABILITY AND COVERAGE OF THIS FEDERAL ACT

The applicability of the ICWA is an important question of federal law that has not been, but should be, settled by this Honorable Court.

In *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989), this court stated:

> "[T]he meaning of a federal statute is necessarily a federal question in the sense that its construction remains subject to this Court's supervision, see *P. Bator, D. Meltzer, P. Mishkin, & D.*

Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 566 (3d ed. 1988); cf. *Reconstruction Finance Corporation v. Beaver County*, 328 U.S. 204, 210 (1946)...One reason for this rule of construction is that federal statutes are generally intended to have uniform nationwide application. *Jerome*, supra, at 104; *Dickerson, supra*, at 119-120; *United States v. Pelzer*, 312 U.S. 399, 402 - 403 (1941)." *Id.* at 43.

"The Wagner Act is . . . intended to solve a national problem on a national scale. . . . Nothing in the statute's background, history, terms or purposes indicates its scope is to be limited by . . . varying local conceptions, either statutory or judicial, or that it is to be administered in accordance with whatever different standards the respective states may see fit to adopt...For the two principal reasons that follow, we believe that what we said of the Wagner Act applies equally well to the ICWA." *Id.* at 44.

While addressing the issue of domicile, the Holyfield court stated the following, which should be equally reasonable in reference to the issue of applicability of the ICWA:

> "...[a] statute under which different rules apply from time to time to the same child, simply as a result of his or her transport from one State to another, cannot be what Congress had in mind." *Id.* at 47.

It is both elementary and undisputed that Federal statutes are meant to have nationwide uniformity and that this court has authority to decide questions of Federal law, not the individual state courts, no matter how they rationalize their actions.

This court, in *Fedorenko v. United States*, 449 U.S. 490, 513 n.35 (1981), stated: "But [i]t is not the function of the courts to amend statutes under the guise of 'statutory interpretation."

This court should grant my petition and finally decide these issues, which are of such great importance to so many, once and for all, so that the millions of people who are affected by it will never again have to be harmed by state courts continuously revisiting the issue.

IV. AWARDING CONSERVATORSHIP OF A CHILD TO A THIRD-PARTY NON-PARENT, OVER THE OBJECTIONS OF A BIOLOGICAL PARENT, AND WITHOUT A FINDING OF PARENTAL UNFITNESS, UNCONSTITUTIONALLY INFRINGES UPON "THE INTEREST OF PARENTS IN THE CARE, CUSTODY, AND CONTROL OF THEIR CHILDREN

This Honorable Court has addressed this issue many times over the last century, and has consistently ruled that a parent's right to direct the care, custody, control, education, and religious upbringing of their children is one of the liberties specifically protected by the Due Process clause of the Fourteenth Amendment.

I know this is a case specific issue, so I haven't spent much time on it, and I won't here. I will simply say that the appellate court's opinion erroneously states that my constitutional arguments were one paragraph, and that they were not properly preserved. Neither of these assertions is correct.

My constitutional arguments spanned 5 pages of my appellate brief, (App. Br. Pgs. 50-54), and long before that, were properly raised at the trial court level by and through: (1) a formal list of objections presented to the trial court, requesting that a hearing be held and that rulings be made on all objections (which never occurred), (CR 305-352); and (2) a Formal Bill of Exception (CR 703-715), in which said objections were also Attached (which the trial

court ignored). Even if they had not been properly preserved, as they most certainly were, a state's error preservation rules should not unlawfully preempt the Supremacy Clause. The United States Constitution should apply equally to *all* American citizens...whether they possess a law degree or not. One should not have to "preserve" a right which is already inherently theirs. The people who fought and died in order for us to have those rights have *already* preserved them for us...with their blood.

V. THE DECISION BELOW IS INCORRECT, UNLAWFUL, AND UNJUST

The Court of Appeals Fifth District of Texas at Dallas erred in its initial determination that the ICWA did not apply to the present case. That court presented no specific findings of fact or conclusions of law other than this single statement: "Consequently, we conclude that the proceeding was not an action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a conservator". App. 7a. I will, however, attempt to address not only this incorrect assertion, but the other incorrect assertions which they seem to attempt to make in their statements.

Initially, it is important to note that the ICWA is triggered, according to section 1912(a), "In *any* involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved". (Emphasis added.) My little girl and I are both enrolled members of the Choctaw

Nation. It is undisputed that she is an Indian child under section 1903(4)(a). The trial court and all parties were given written notice that an Indian child was involved, and that it was precluded from proceeding by section 1912(a), on our very first appearance, the temporary orders hearing of April 29, 2009. (CR 222-223) From that very moment, the ICWA applied to this situation, by its plain terms, and the trial court had a ministerial duty to insure the performance of non-discretionary acts before it could proceed.

Furthermore, section 1903(1)(i) states:

> "(1) "child custody proceeding" shall mean and include - (i) "foster care placement" which shall mean *any* action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or *conservator* where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated." (Emphasis added.)

The present case is an involuntary action which initially (1) removed the Indian child from mother's legal *and* physical custody, as well as from my legal custody; and (2) *temporarily*, from April 29, 2009 to July 28, 2011, placed the child in the home of Respondent Hudson during his times of possession, who was appointed a "*temporary* joint managing

conservator" of our child; where we (3) could not have the child returned upon demand; and where (4) our parental rights had not been terminated.

As the appellate court so artfully pointed out in its own words: "The plain and ordinary meaning of "temporary" is "lasting for a time only: existing or continuing for a limited time: impermanent, transitory"...and the plain and ordinary meaning of "placement" is "a transfer of custody (as of a minor)." App. 6a.

Apparently, that court thinks that they do not have to apply the law until they get to the end result of the proceedings and find, since the placement is now permanent instead of being temporary, as it was for 2 years and 3 months, that they never had to apply the law, and do not have to apply it now.

In reference to the appellate court's incorrect assertion that "The ICWA was primarily intended to apply only to situations involving the attempts of *public and private agencies* to remove children from their Indian families, not to inter-family disputes or divorce proceedings" (*id.* at 3a., emphasis added), I would point out again that there are no such exemptions in the plain and unambiguous language of the ICWA itself. The only two express exemptions which congress purposefully included in the plain language are the two in section 1903(1)(iv): "Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents". There

are no others and, under basic rules of statutory construction, express exceptions in a statute exclude all others. (See *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616-17; *2A Statutes and Statutory Construction* §47.11, at 145 (Sands 4th Ed. 1984 rev.)) Congress clearly intended that there be exceptions to coverage, and clearly illustrated such intent, and its precise scope, by expressly addressing these two exemptions in a clear and concise manner, and by deciding not to add any others.

Furthermore, this is neither a divorce proceeding (which is excluded from coverage), nor is it an "intra-family" dispute (which is not excluded from coverage). There are three parties to this action: mother and I, and Respondent Hudson, who filed suit against both of us for custody of our biological child. None of us has ever been legally married. None of us is legally considered to be a family member to any of the others, or has ever been legally related in any way whatsoever to any other party.

As well, the idea that the ICWA does not apply to a dispute between biological parents and non-parents is simply ludicrous, and also has no basis in the plain language of the law.

This idea fails on its face when one takes into account the fact that in *every* case where the parties are not *solely* the biological mother and biological father, a non-parent is involved. Every single adoption and pre-adoptive placement under the ICWA involves prospective adopters who are non-parents. Every single termination proceeding

involves a state agency or another party who initiates those proceedings, all of whom are non-parents. Every single "foster care placement", as defined in the ICWA, involves either a state agency or an individual, all of whom are non-parents. If the ICWA did not apply to cases between biological parents and non-parents, then it would *never* apply under any circumstances.

The idea that the ICWA doesn't apply to any situation which does not specifically involve a state agency is equally ludicrous.

Did Congress intend to protect Indian children, Indian parents, and the very existence of Indian tribes themselves in *all* other cases, but not in the significant numbers of pre-adoptive placements, private adoptions, terminations, or foster care placements initiated by private individuals, which otherwise precisely meet the definitions within the ICWA? Surely Congress had the ability to illustrate that idea, and would no doubt have made it perfectly clear to everyone, had that been their intent.

All of this is notwithstanding the fact that the policy section of the BIA Guidelines for State Courts states:

> "Proceedings in state courts involving the custody of Indian children *shall* follow strict procedures and meet stringent requirements to justify *any* result in any individual case contrary to these preferences. The Indian Child

> Welfare Act, the federal regulations implementing the Act, the recommended guidelines and any state statutes, regulations or rules promulgated to implement the Act *shall be liberally construed* in favor of a result that is consistent with these preferences. *Any* ambiguities in any of such statutes, regulations, rules or guidelines *shall* be resolved in favor of the result that is most consistent with these preferences." (Emphasis added.)

The ruling of the appellate court in the present case is transparently incorrect, unlawful, and unjust in its entirety.

In Closing

Belief is a lever which, once pulled, moves almost everything in its path. In the present case, it is precisely that principle alone which has brought us, inevitably, to this point.

The Court of Appeals Fifth District of Texas at Dallas simply *invented* a way to rule against us, and the Supreme Court of Texas subsequently refused to hear our case, based upon nothing more than the absolutely horrible and baseless accusations which were made in the trial court (in the absence of *any* evidence whatsoever) and which were repeated in the opinion of the appellate court, not a single word of which bore any resemblance whatsoever to the actual truth.

The courts below didn't care about the truth. They weren't interested in the law, or in applying it correctly to the facts of our case. They didn't care about the fact that my children's hearts were breaking, or that my precious little girl only wanted to come home and be with her daddy. They didn't care that there has *never* been so much as an *accusation* of parental unfitness made, much less an actual *finding* of parental unfitness (regarding *either* parent).

The only thing which mattered to them was that, according to the people who perjured themselves at trial, I was a monster, who didn't deserve to have the protections which the laws of the United States and the Constitution provide to every other citizen of this

country. Apparently, my children didn't deserve to have them either.

Had the courts below made their decisions based upon those laws and that Constitution, as opposed to their emotional responses to the blatant and rampant misrepresentations of fact and of truth which were put forth by the opposition, the outcome of this case would have been much different. The lives of my entire family would not have been destroyed. My little girl would not have had to cry herself to sleep, night after night, for over four years. Everything which has occurred before this point, and everything which will occur after it, would not have been necessary.

A great many lives have been ruined, hundreds of thousands of dollars have been wasted, and over four years of time, effort, and other resources have been thrown into the fire right along with the ideas of freedom and justice. Irreparable psychological and emotional harm have been done to my precious child, and time has been stolen from her, from me, and from our entire family, which can never be regained. Our very *lives*, at least the ones we *should* have lived together, have been stolen from us.

I ask this Honorable Court to insure that it doesn't make the same mistake as the courts below have. The only things which matter here are the laws of the United States and the Constitution. The fact that people have the ability to get up on the witness stand and perjure themselves shouldn't preclude the

application of those things, based upon the personal bias of people who should have known better.

Until recently, my little girl and I hadn't seen each other for almost *four* years. I have done absolutely nothing wrong. My little girl has done nothing wrong. I have never, in the entirety of her life, even *raised my voice* to the child, and no court in this country should have the ability to take her from her family, and give her to some ex-boyfriend of mother's, or anyone else, without a finding of parental unfitness.

What has happened in this case is a pathetic mockery of justice, and it should never again be allowed to happen to another family, or another child, under any circumstances whatsoever.

Unfortunately, it *will* happen again, over and over, year after year, to children and families in practically every state in this country, unless and until this Honorable Court acts.

One final thing: I promised my little girl that I would never stop fighting until she can finally come home...and I never break promises to my children.

Bellum sine finis. So be it.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, this case should be remanded, with instructions to comply with the Indian Child Welfare Act of 1978.

Respectfully submitted,

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My love for my precious child, and her love for me, is *not* dependent upon who has custody of her. Nor is the love of any other Indian father or child dependent upon such a thing.

It is that *love* which makes us a family...not the fact that we have, or do not have, legal or physical possession of our children.

Thank you, Justices Sotomayor, Scalia, Kagan, and Ginsburg, for your dissenting opinions in the "Baby Girl" case. There are 5.2 million Indians, two heartbroken fathers, and two heartbroken little girls who agree with you.

No. 13-_____

IN THE

Supreme Court of the United States

JAMES LATIMER,

Petitioner,

v.

DEVIN HUDSON, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals Fifth District of Texas at Dallas

APPENDIX

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APPENDIX A

File: 110854F - From documents transmitted: 08/20/2012

AFFIRM; Opinion Filed August 20, 2012.

(The Official Seal of) THE STATE OF TEXAS

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-11-00854-CV

IN THE INTEREST OF E.G.L., A CHILD

On Appeal from the 296th Judicial District Court
Collin County, Texas
Trial Court Cause No. 296-51478-2009

OPINION

Before Justices O'Neill, Richter, and Lang-Miers
Opinion By Justice Lang-Miers

Tasha S. (Mother) and James L. (Father) lived together for a time and had a child, E.G.L. (E.), in 2002. Around 2005, Mother and Father's relationship ended and Mother and Devin H. (Stepfather) moved in together. Mother and

Stepfather also had a child, A.F.H. (A.). In 2009, Mother and Stepfather separated, and Stepfather filed this suit to adjudicate his parentage of A., to adjudicate Father's parentage of E., and to seek appointment as both A.'s and E.'s sole managing conservator.

Mother initially contested Stepfather's petition seeking conservatorship of A. and E., but soon thereafter she and Stepfather agreed to become "co-parents" of the children. Father contested Stepfather's petition seeking conservatorship of E. and asked for a jury trial. Before trial, Mother and Stepfather agreed to be appointed joint managing conservators of both children, with Stepfather as the conservator with the exclusive right to designate the primary residence of both children. The only issue submitted to the jury was whether Stepfather or Father should be designated as the conservator with the exclusive right to designate E.'s primary residence. The jury found in favor of Stepfather, and the trial court rendered an order appointing Mother and Stepfather as joint managing conservators of A. and E., with Stepfather having the exclusive right to designate the primary residence of the children, and Father as possessory conservator of E. Father appeals, raising several issues in his pro se brief. We affirm the trial court's order.

DOES THE INDIAN CHILD WELFARE ACT APPLY?

In issue one with multiple sub-issues, Father argues that the Indian Child Welfare Act (ICWA) applies to this custody proceeding and that the trial court erred by not applying its provisions. We disagree.

In 1978, Congress passed the ICWA to address the "rising concern in the mid-1970's [sic] over the consequences to Indian children, Indian families, and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes." Miss. Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 32 (1989). Accord Doty-Jabbaar v. Dallas Cnty. Child Servs., 19 S.W.3d 870, 874 (Tex. App.-Dallas 2000, pet. denied). The ICWA was primarily intended to "apply only to situations involving the attempts of public and private agencies to remove children from their Indian families, not to inter-family disputes or divorce proceedings." Comanche Nation v. Fox, 128 S.W.3d 745, 753 (Tex. App.-Austin 2004, no pet.).

The ICWA states that it applies to a "child custody proceeding," which it defines as:

> (i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a

> foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
>
> (ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;
>
> (iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and
>
> (iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.
>
> Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents. 25 U.S.C. § 1903(1) (2001).

Whether the ICWA applies to this proceeding is a matter of statutory interpretation. We review a trial

court's interpretation of a statute de novo. Johnson v. City of Fort Worth, 774 S.W.2d 653, 655-56 (Tex. 1989); see Doty-Jabbaar, 19 S.W.3d at 874. In construing a federal statute, federal law mandates that we look first to the statute's language to determine whether the language is plain and unambiguous. Omnibus Int'l, Inc. v. AT&T, Inc., 111 S.W.3d 818, 821 (Tex. App.-Dallas 2003, pet. granted, judgm't vacated w.r.m.). If the language is clear, we interpret the statute according to its plain language. See id.; Doty-Jabbaar, 19 S.W.3d at 874.

The only definition that is implicated in this proceeding is "foster care placement," which consists of four requirements: (1) the removal of an Indian child from the child's parent or Indian custodian, (2) temporarily placing the child in a foster home or institution or the home of a guardian or conservator, where (3) the parent or Indian custodian cannot have the child returned upon demand, and (4) parental rights have not been terminated. 25 U.S.C. § 1903(1)(i).

Father argues that "there is no question that this is a child custody proceeding." But he does not argue how this proceeding satisfies the four prongs of "foster care placement" contained in the ICWA. Stepfather argues that this proceeding did not involve "foster care placement" because the "only issue before the trial court was who should be the conservator of [E.], which means that this case was a 'custody' proceeding between private parties." He also contends that none of the ICWA's provisions are

implicated because a parent of E. was appointed joint managing conservator of E.

In Stepfather's petition, he sought sole managing conservatorship of E., which, if granted, would satisfy prongs one, three, and four. But Father does not argue how appointing Stepfather as sole managing conservator of E. satisfies the second prong of "temporary placement in a foster home or institution or the home of a guardian or conservator."

The ICWA does not define "temporary placement." The plain and ordinary meaning of "temporary" is "lasting for a time only: existing or continuing for a limited time: impermanent, transitory." Webster's Third New International Dictionary 2353 (1981). And the plain and ordinary meaning of "placement" is "a transfer of custody (as of a minor...)."Id. at 1728. Based on the common everyday meaning of temporary and placement, Stepfather's petition seeking sole managing conservatorship of E. did not seek "temporary placement" of E.

Other states have held that the ICWA does apply to proceedings between a parent and a nonparent, but those cases did not turn on the plain meaning of the statutory language "temporary placement." See, e.g., J.W. v. R.J., 951 P.2d 1206, 1208 (Alaska 1998) (ICWA applied to dispute between father and stepfather over custody of Indian child where no question that stepfather was awarded temporary guardianship of child), overruled on other grounds by Evans v. McTaggart, 88 P.3d 1078 (Alaska 2004);

Empson-Laviolette v. Crago, 760 N.W.2d 793, 796 (Mich. Ct. App. 2008) (ICWA applied to dispute between mother and nonparents where no question that nonparents were appointed temporary guardians of Indian child); In re Guardianship of Ashley Elizabeth R., 863 P.2d 451, 452-53 (N.M. Ct. App. 1993) (ICWA applied to dispute over custody between Navajo Nation and deceased mother's aunt with no discussion of "temporary placement").

Additionally, the petition sought to establish Father's status as E.'s father, not to remove E. from Father. And after the trial court adjudicated Father as E.'s father and appointed him possessory conservator of E., the court ordered and Texas law imposed certain legal rights and duties on Father with respect to E. See Tex. Fam. Code Ann. §§ 153.071- .193 (West 2008 & Supp. 2012) (setting out possessory conservator's legal rights and duties with respect to child).

Consequently, we conclude that the proceeding was not an "action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a conservator." See Fox, 128 S.W.3d at 753 (concluding ICWA did not apply to child custody modification proceeding in which grandparents sought removal of mother as joint managing conservator and appointment of grandparents as managing conservators and mother as possessory conservator of Indian child). Because we conclude that the ICWA does not apply to this proceeding, we do not need to

consider Father's remaining arguments under issue one. We resolve issue one against appellant.

DID STEPFATHER HAVE STANDING TO SEEK CUSTODY OF E.?

In issue two, Father challenges Stepfather's standing to seek conservatorship of E. We conclude that the trial court did not err when it found Stepfather had standing.

The family code defines who has standing to file an original suit affecting the parent-child relationship. See Tex. Fam. Code Ann. § 102.003 (West Supp. 2012). A party seeking relief "must plead and establish standing within the parameters of the language used in the code." In re M.K.S.-V., 301 S.W.3d 460, 464 (Tex. App.-Dallas 2009, pet. denied). Because standing is a question of law, we review the trial court's decision on standing de novo. Id.

Stepfather contended that he has standing to file the suit under section 102.003(a)(9). Section 102.003(a)(9) states that an "original suit may be filed at any time by: . . . a person, other than a foster parent, who has had actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition[.]" Tex. Fam. Code Ann. § 102.003(a)(9). "The purpose of section 102.003(a)(9) is to create standing for those who have developed and maintained a relationship with a child over time." In re A.C.F.H., No. 04-11-00322- CV, 2012 WL

726940, at *1 (Tex. App.-San Antonio Mar. 7, 2012, no pet.). In computing the time under section 102.003(a)(9), "the court may not require that the time be continuous and uninterrupted but shall consider the child's principal residence during the relevant time preceding the date of commencement of the suit." Tex. Fam. Code Ann. § 102.003(b).

Stepfather filed this original suit on March 27, 2009, and, tracking the language in section 102.003(a)(9), alleged that he had standing because he was a person "who has had actual care, custody and possession of the children for at least six months ending not more than 90 days preceding the date of filing of this petition . . . ." Father contested that allegation of standing, however, and argued that Stepfather "admitted that he lied in his petition and that [E.] actually resided with the mother in Dallas County at the time" he filed the petition. He also contends that Stepfather's petition is "fraud on the court" and tampering with a governmental record because the children did not live with Stepfather at the time he filed the petition. He argues that Stepfather's pleadings should be struck and the case dismissed.

At a hearing on the issue of Stepfather's standing, Stepfather testified that Mother and E. began living with him around late 2005 or early 2006. Stepfather testified that Mother was rarely at home because she was attending school and working part-time. He said he was "cast completely into the role of raising [E.] almost entirely full-time. . . . so [E.] spent more time with me than she did with her mother." Stepfather

testified that he and Mother had a child, A., in December 2007, and in November 2008, Stepfather purchased a home in Allen, Texas, because he wanted the children to attend school in the Allen school district. The four of them lived there as a family until February 18, 2009, when Mother left with both children. Stepfather filed this original suit on March 27, 2009, less than 90 days later. The trial court ruled that Stepfather had standing to file the original suit.

Father has not cited any evidence in the record supporting his contention that Stepfather "lied" in his petition about the children's residence. Father contends that Stepfather said the children were living with him at the time he filed the petition when they were actually living with Mother. But Stepfather's petition merely tracked the language of section 102.003(a)(9). And section 102.003(a)(9) does not require the child to be living with the person who filed the petition at the time the petition was filed-it requires only that the person had actual care, control, and possession of the child for at least six months, and that this six-month period did not end more than ninety days before the petition was filed. See Tex. Fam. Code Ann. § 102.003(a)(9). The evidence showed that Mother and E. lived with Stepfather since late 2005 or early 2006, that Mother and E. left Stepfather in February 2009, and that Stepfather filed this petition in March 2009. We conclude that Stepfather established his standing to file this original suit, and that Stepfather's petition was not a "fraud on the court" or tampering with a governmental record.

Father also argues for the first time on appeal that section 102.003 of the family code is unconstitutional "as interpreted and applied" by the court. He contends that section 102.003 as interpreted and applied by the trial court "would give any Petitioner in the State of Texas the legal right to ask for, and receive, custody of another party's child simply by virtue of the child's mother residing with said Petitioner." And he contends that this "unlawfully divest[s] and deprive[s] a fit parent of Constitutionally protected rights and access to their child."

To preserve an issue for appeal, a party must make a timely, specific objection or motion in the trial court that states the grounds for the desired ruling with sufficient specificity to make the trial court aware of the complaint. Tex. R. App. P. 33.1(a); Dreyer v. Greene, 871 S.W.2d 697, 698 (Tex. 1993) ("As a rule, a claim, including a constitutional claim, must have been asserted in the trial court in order to be raised on appeal."). Father does not cite, and we have not found, where he raised this specific constitutional argument about family code section 102.003 in the trial court.

Consequently, we conclude that this argument presents nothing for our review. Dreyer, 871 S.W.2d at 698 (declining to address constitutional argument not raised in trial court). We resolve issue two against appellant.

DOES THE FINAL ORDER VIOLATE FATHER'S CONSTITUTIONAL RIGHTS?

In his final issue, Father raises additional constitutional arguments. His entire argument states:

> Appellant [Father] asserts that Amendment XIV, Section 1 of the Constitution of the United States of America was violated when the trial court issued Temporary Orders, and again when it issued Final Orders, which permanently removed the Indian child, [E.], from his legal and physical custody. Said Orders deprived Appellant of his Constitutionally protected rights to direct the care, control, custody, education, and religious upbringing of his child without good cause, without Due Process, without a showing of parental unfitness, in direct violation of the Federal [ICWA], and in direct violation of the United States Constitution.

Initially we note that temporary orders are not appealable. In re K.N.K., No. 05-10-01053- CV, 2011 WL 489932, at *1 (Tex. App.-Dallas Feb. 14, 2011, no pet.) (mem. op.). Consequently, we do not consider Father's arguments with regard to temporary orders issued in this case.

With regard to the final order, Father does not state the portion of the final order about which he specifically complains. And although Father complains that the trial court deprived him of his constitutionally protected parental rights in the final order, the record shows that, instead, the final order established Father as the child's father and specifically identified his rights and duties to the child as follows:

> 1. the right to receive information from any other conservator of the child concerning the health, education, and welfare of the child;
>
> 2. the right to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the child;
>
> 3. the right of access to medical, dental, psychological, and educational records of the child;
>
> 4. the right to consult with a physician, dentist, or psychologist of the child;
>
> 5. the right to consult with school officials concerning the child's welfare and educational status, including school activities;

6. the right to attend school activities;

7. the right to be designated on the child's records as a person to be notified in case of an emergency;

8. the right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child; and

9. the right to manage the estates of the child to the extent the estates have been created by the parent or the parent's family...

1. the duty to inform the other conservator of the child in a timely manner of significant information concerning the health, education, and welfare of the child; and

2. the duty to inform the other conservator of the child if the conservator resides with for at least thirty days, marries, or intends to marry a person who the conservator knows is registered as a sex offender under chapter 62 of the Code of Criminal Procedure or is currently charged with an offense for which on conviction the person would be required to register under that chapter. . . .And

> the order states that during Father's time of possession, he has the following rights and duties concerning E.:
>
> 1. the duty of care, control, protection, and reasonable discipline of the child;
>
> 2. the duty to support the child, including providing the child with clothing, food, shelter, and medical and dental care not involving an invasive procedure;
>
> 3. the right to consent for the child to medical and dental care not involving an invasive procedure; and
>
> 4. the right to direct the moral and religious training of the child.

We conclude that Father did not establish that the final order "permanently removed the Indian child, [E.], from his legal and physical custody" or violated his constitutionally protected parental rights. To the extent Father is actually complaining that he should have been appointed managing conservator instead of possessory conservator, we point out that the standard for conservatorship in Texas is always what is in the best interest of the child, not the best interest of the parent. Tex. Fam. Code Ann. § 153.002 (West 2008) ("The best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child.").

In meeting the requirement to specify the rights and duties of each conservator regarding the "physical care, support, and education" of a child, a trial court has "broad discretion in crafting the rights and duties of each conservator so as to effectuate the best interest of the child." In re M.A.M., 346 S.W.3d 10, 18 (Tex. App.-Dallas 2011, pet. denied). See Tex. Fam. Code Ann. § 153.134(b)(2); In re M.P.B., 257 S.W.3d 804, 811 (Tex. App.-Dallas 2008, no pet.). We will not reverse a trial court's decision unless the court acted arbitrarily, unreasonably, or without reference to any guiding rules or principles. In re M.P.B., 257 S.W.3d at 811-12. A trial court does not abuse its discretion if some evidence of a substantial and probative character exists to support the court's decision. Id.

Under an abuse of discretion standard, whether the evidence is sufficient is not an independent ground for asserting trial court error, but it is a factor we consider in assessing whether a trial court abused its discretion. Id. at 811. But Father does not argue that the evidence is insufficient to support the trial court's decision to appoint him possessory conservator instead of managing conservator. And Father does not explain how the evidence in this case does not support the trial court's decision with regard to E.'s best interest. For example, he does not argue any of the factors we traditionally consider in determining a child's best interest, such as the child's desires, the child's current and future physical and emotional needs, any physical or emotional danger to the child in the present or

future, the parental abilities of the individuals involved, the programs available to those individuals to promote the child's best interest, the plans for the child by those individuals, the stability of the home, acts or omissions by a parent tending to show that the existing parent-child relationship is not a proper one, and any excuse for the acts or omissions of the parent. In re K.L.W., 301 S.W.3d 423, 426 (Tex. App.-Dallas 2009, no pet.) (citing Holley v. Adams, 544 S.W.2d 367, 371-72 (Tex. 1976)). Regardless, we have reviewed the evidence and cannot conclude that the trial court abused its discretion by appointing Father possessory conservator. The evidence showed that Mother sought and obtained two protective orders against Father-one in 2003 and one in 2005. A review of Father's trial testimony shows that Father had little relationship with E. over the years and did not regularly exercise his rights to visitation. In responding to many questions about his relationship with Mother, Father invoked his right under the Fifth Amendment not to answer questions about family violence. Father was unable to name E.'s school, her teacher, the activities in which she is involved, or other details one would expect a parent to know about his child.

On the other hand, Stepfather testified that he had raised E. since she was three years old and E. refers to him as "daddy." He testified that he loves E. as his own, he is on the board of directors for E.'s elementary school PTA, chairman of the Dad's Club at E.'s elementary school, serves as E.'s Girl Scout troop leader, and is her Destination Imagination coach. He testified that he and Mother agreed that

the children would live with him so they could continue to attend Allen schools. Stepfather testified that while he and Mother "live in different households . . . [they] do everything together. We go to holidays together. . . . We attend all of the same functions. . . . We are always around."

Stepfather testified that Mother is also a leader in the Girl Scouts and Destination Imagination and attends PTA meetings with him. He testified that he and Mother split all expenses of the children "down the middle."

Stepfather also testified that he and Mother want supervised visitation for Father because "every bit of evidence that's been offered to me regarding his character and regarding . . . his actions and the words he has said and the threats that he has made indicate that his intent, given the first possible opportunity at unsupervised visitation, is to remove [E.] from the State of Texas onto Indian territory where the jurisdiction of - the Court does not hold jurisdiction. And we are afraid that she would be kidnapped." Stepfather also testified that Father told him "that he would never, ever, ever stop litigation in this case . . . ." And Stepfather testified that E. told him that "she had a dream that her father kicked the door down of her mother's house and killed her mother and took her away . . . ." Mother explained that her relationship with Father began when she was only 15 and Father was 25. Even though Mother's grandmother ended the relationship, Mother said Father was always showing up at places she went and stalked her

during that time. In 1997 when Mother was 17, she attempted suicide because of the turmoil in her life, which she described as "[c]hildhood trauma, years of abuse, and him," referring to Father. She said Father manipulated her friends and tried to turn them against her and to use them to find out information about her.

When she and Father began a relationship again around 2002, Father often became angry and assaulted her. She described how Father sometimes took his anger at her out on his own son from a different relationship. She said the last time she and Father were together, Father threatened to hunt her down and kill her. She said after Father left for work, she "grabbed" E. and her photo album, and left that night. She also got a protective order. And she testified that she feared for E. if Father was given custody of her. Mother testified that E.'s behavior changed after visiting Father, and a report to Child Protective Services was made by the school relating to her behavior. She said E. would get into trouble at school for a week or two after she visited Father. Mother said Father "hasn't been around" E., and for the past three years, he has seen E. "a handful of times," went to two or three of E.'s soccer games, has not provided financial support and has not provided medical insurance. She testified that she believed it was in A.'s and E.'s best interests to remain together with Stepfather in Allen. She also testified that as between Father and Stepfather, E. would be "better off" with Stepfather because "[h]e has been the dad, he has taken care of her with me." She testified that she knows "what's in [E.'s] best interest . . . .That's

why I am willing to give [Stepfather] primary residence."

Angela A. testified that she knows Mother, Stepfather, and Father. She said she talked to Father within the last two to three years, while this case was pending, and he told her that he would "give that b---- a hot-shot and take [E.] and go live on the Indian reservation where no one can find us." Angela said Father told her that a "hot-shot" is "an overdose of heroin." She testified that in her opinion Father would not be the best person to raise E. because he is not "a stable human being, stable person" because he threatened to kill the child's mother.

Johnni C., Mother's friend, also testified that she has known both Mother and Father for years. She and Mother were friends when Mother and Father first began having a relationship when Mother was 15. Johnni described Mother and Father's relationship as "insane." She said she heard Father "talk bad" to Mother; heard him "call her derogatory names," and saw him hit her. She described an incident when she and Mother were young and at Mother's grandmother's house. Johnni saw someone on the roof of grandmother's house looking through the skylight. She went outside and saw Father on the roof. They yelled at each other, and he jumped down and ran off. She also described a later incident after she had married and moved into an apartment. She said Mother was there "due to an earlier incident between" Mother and Father. Someone started banging on the door, and they knew it was

Father so they did not answer the door. She said everything got quiet, and about twenty minutes later, Father was standing on her third floor balcony looking inside the apartment; she said there was no stairway access to the balcony. She said it scared them, and she told Mother to hide. Johnni went to her bedroom and retrieved a shotgun her dad had given her. Although the gun was not loaded and she had no ammunition for it, she opened the blinds and pointed the gun at Father. He left the balcony. She also described an incident in which Father pinned her between his truck and Mother's truck. Johnni also testified that after her address became part of the court records for this proceeding, she moved to a new residence because of Father's "track record of stalking both myself and [Mother]." She said Father has threatened to kill her and her mother and she wanted to prevent him from having access to her.

We have considered the entire record and conclude that the trial court did not abuse its discretion in determining the conservatorship of E. We resolve issue three against appellant.

Conclusion

We affirm the trial court's order.

s/ Elizabeth Lang-Miers
ELIZABETH LANG-MIERS
JUSTICE

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(The Official Seal of) THE STATE OF TEXAS

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

IN THE INTEREST OF E.G.L., A CHILD

No. 05-11-00854-CV

Appeal from the 296th Judicial District Court of Collin County, Texas. (Tr.Ct.No. 296- 51478-2009).

Opinion delivered by Justice Lang-Miers, Justices O'Neill and Richter participating.

In accordance with this Court's opinion of this date, the order of the trial court is **AFFIRMED**. It is **ORDERED** that appellee Devin Hudson recover his costs of this appeal from appellant James Latimer.

Judgment entered August 20, 2012.

s/ Elizabeth Lang-Miers
ELIZABETH LANG-MIERS
JUSTICE

APPENDIX B

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NO. 296-51478-2009

IN THE INTEREST OF [*A.F.H.*] AND [*E.G.L.*], CHILDREN

IN THE DISTRICT COURT, 296TH JUDICIAL DISTRICT, COLLIN COUNTY, TEXAS

ORDER IN SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP REGARDING ELISABETH GRACE LATIMER

On June 11, 2011 the Court heard this case.

Appearances

Petitioner, Devin Hudson, appeared in person and through attorney of record, Lon Garner, and announced ready for trial.

Respondent, Tasha Swadley, appeared in person and announced ready for trial.

Other parties appearing were:
Name: James Latimer
Relationship to child: father of [*E.G.L.*]

Jurisdiction

The Court, after examining the record and the evidence and argument of counsel, finds that it has jurisdiction of this case and of all the parties and that no other court has continuing, exclusive

jurisdiction of this case. All persons entitled to citation were properly cited.

Jury

A jury was duly selected, questions of fact were submitted to the jury, and a verdict was returned and duly filed.

Record

The record of testimony was duly reported by the court reporter for the 296th Judicial District Court.

Child

The Court finds that the following children are the subject of this suit:
Name: [*A.F.H.*]
Sex: female
Birth date: [*redacted*]
Home state: Texas
Name: [*E.G.L.*]
Sex: female
Birth date: [*redacted*]
Home state: Texas

Parenting Plan

The Court finds that the provisions in these orders relating to the rights and duties of the parties with relation to the child, possession of and access to the child, child support, and optimizing the development of a close and continuing relationship between each party and the child constitute the parenting plan established by the Court.

Conservatorship

The Court finds that the following orders are in the best interest of the child.

IT IS ORDERED that Devin Hudson and Tasha Swadley are appointed Joint Managing Conservators and James Latimer is appointed Possessory Conservator of the following child: [*E.G.L.*].

IT IS ORDERED that, at all times, Devin Hudson, as a parent joint managing conservator, shall have the following rights:

1. the right to receive information from any other conservator of the child concerning the health, education, and welfare of the child;
2. the right to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the child;
3. the right of access to medical, dental, psychological, and educational records of the child;
4. the right to consult with a physician, dentist, or psychologist of the child;
5. the right to consult with school officials concerning the child's welfare and educational status, including school activities;
6. the right to attend school activities;
7. the right to be designated on the child's records as a person to be notified in case of an emergency;
8. the right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child; and
9. the right to manage the estates of the child to the extent the estates have been created by the parent or the parent's family.

IT IS ORDERED that, at all times, Tasha Swadley, as a parent joint managing conservator, shall have the following rights:

1. the right to receive information from any other conservator of the child concerning the health, education, and welfare of the child;

2. the right to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the child;

3. the right of access to medical, dental, psychological, and educational records of the child;

4. the right to consult with a physician, dentist, or psychologist of the child;

5. the right to consult with school officials concerning the child's welfare and educational status, including school activities;

6. the right to attend school activities;

7. the right to be designated on the child's records as a person to be notified in case of an emergency;

8. the right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child; and

9. the right to manage the estates of the child to the extent the estates have been created by the parent or the parent's family.

IT IS ORDERED that, at all times, James Latimer, as a possessory conservator, shall have the following rights:

1. the right to receive information from any other conservator of the child concerning the health, education, and welfare of the child;

2. the right to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the child;

3. the right of access to medical, dental, psychological, and educational records of the child;

4. the right to consult with a physician, dentist, or psychologist of the child;

5. the right to consult with school officials concerning the child's welfare and educational status, including school activities;

6. the right to attend school activities;

7. the right to be designated on the child's records as a person to be notified in case of an emergency;

8. the right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child; and

9. the right to manage the estates of the child to the extent the estates have been created by the parent or the parent's family.

IT IS ORDERED that, at all times, Devin Hudson and Tasha Swadley as parent joint managing conservators and James Latimer as a possessory conservator shall each have the following duties:

1. the duty to inform the other conservator of the child in a timely manner of significant information concerning the health, education, and welfare of the child; and

2. the duty to inform the other conservator of the child if the conservator resides with for at least thirty days, marries, or intends to marry a person who the conservator knows is registered as a sex offender under chapter 62 of the Code of Criminal

Procedure or is currently charged with an offense for which on conviction the person would be required to register under that chapter. IT IS ORDERED that this information shall be tendered in the form of a notice made as soon as practicable, but not later than the fortieth day after the date the conservator of the child begins to reside with the person or on the tenth day after the date the marriage occurs, as appropriate. IT IS ORDERED that the notice must include a description of the offense that is the basis of the person's requirement to register as a sex offender or of the offense with which the person is charged. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE.

IT IS ORDERED that, during his periods of possession, Devin Hudson, as parent joint managing conservator, shall have the following rights and duties:

1. the duty of care, control, protection, and reasonable discipline of the child;

2. the duty to support the child, including providing the child with clothing, food, shelter, and medical and dental care not involving an invasive procedure;

3. the right to consent for the child to medical and dental care not involving an invasive procedure; and

4. the right to direct the moral and religious training of the child.

IT IS ORDERED that, during her periods of possession, Tasha Swadley, as parent joint managing conservator, shall have the following rights and duties:

1. the duty of care, control, protection, and reasonable discipline of the child;

2. the duty to support the child, including providing the child with clothing, food, shelter, and medical and dental care not involving an invasive procedure;

3. the right to consent for the child to medical and dental care not involving an invasive procedure; and

4. the right to direct the moral and religious training of the child.

IT IS ORDERED that, during his periods of possession, James Latimer, as possessory conservator, shall have the following rights and duties:

1. the duty of care, control, protection, and reasonable discipline of the child;

2. the duty to support the child, including providing the child with clothing, food, shelter, and medical and dental care not involving an invasive procedure;

3. the right to consent for the child to medical and dental care not involving an invasive procedure; and

4. the right to direct the moral and religious training of the child.

IT IS ORDERED that Devin Hudson, as a parent joint managing conservator, shall have the following rights and duty:

1. the exclusive right to designate the primary residence of the child within Collin or contiguous counties;

2. the right, subject to the agreement of the other parent conservator, to consent to medical, dental, and surgical treatment involving invasive procedures;

3. the right, subject to the agreement of the other parent conservator, to consent to psychiatric and psychological treatment of the child;

4. the exclusive right to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child;

5. the right, subject to the agreement of the other parent conservator, to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

6. the right, subject to the agreement of the other parent conservator, to consent to marriage and to enlistment in the armed forces of the United States;

7. the right, subject to the agreement of the other parent conservator, to make decisions concerning the child's education;

8. except as provided by section 264.0111 of the Texas Family Code, the right, subject to the agreement of the other parent conservator, to the services and earnings of the child;

9. except when a guardian of the child's estates or a guardian or attorney ad litem has been appointed for the child, the right, subject to the agreement of the other parent conservator, to act as an agent of the child in relation to the child's estates if the

child's action is required by a state, the United States, or a foreign government; and

10. the duty, subject to the agreement of the other parent conservator, to manage the estates of the child to the extent the estates have been created by community property or the joint property of the parent.

IT IS ORDERED that Tasha Swadley, as a parent joint managing conservator, shall have the following rights and duty:

1. the right, subject to the agreement of the other parent conservator, to consent to medical, dental, and surgical treatment involving invasive procedures;

2. the right, subject to the agreement of the other parent conservator, to consent to psychiatric and psychological treatment of the child;

3. the right, subject to the agreement of the other parent conservator, to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

4. the right, subject to the agreement of the other parent conservator, to consent to marriage and to enlistment in the armed forces of the United States;

5. the right, subject to the agreement of the other parent conservator, to make decisions concerning the child's education;

6. except as provided by section 264.0111 of the Texas Family Code, the right, subject to the agreement of the other parent conservator, to the services and earnings of the child;

7. except when a guardian of the child's estates or a guardian or attorney ad litem has been appointed

for the child, the right, subject to the agreement of the other parent conservator, to act as an agent of the child in relation to the child's estates if the child's action is required by a state, the United States, or a foreign government; and

8. the duty, subject to the agreement of the other parent conservator, to manage the states of the child to the extent the estates have been created by community property or the joint property of the parents.

The Court finds that, in accordance with section 153.001 of the Texas Family Code, it is the public policy of Texas to assure that child will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child, to provide a safe, stable, and nonviolent environment for the child, and to encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage. IT IS ORDERED that the primary residence of the child shall be Collin or contiguous counties, and the parties shall not remove the child from Collin or contiguous counties for the purpose of changing the primary residence of the child until modified by further order of the court of continuing jurisdiction or by written agreement signed by the parties and filed with the court.

IT IS FURTHER ORDERED that Devin Hudson shall have the exclusive right to designate the child's primary residence within Collin or contiguous counties.

IT IS FURTHER ORDERED that this geographic restriction on the residence of the child shall be lifted if, at the time Devin Hudson wishes to remove the child from Collin or contiguous counties for the purpose of changing the primary residence of the child, Tasha Swadley or James Latimer does not reside in Collin or contiguous counties.

Possession and Access

1. *Possession Order*

IT IS ORDERED that each conservator shall comply with all terms and conditions of this Possession Order. IT IS ORDERED that this Standard Possession Order is effective immediately and applies to all periods of possession occurring on and after the date the Court signs this Possession Order. IT IS, THEREFORE, ORDERED:

(a) Definitions

1. In this Possession Order "school" means the primary or secondary school in which the child is enrolled or, if the child is not enrolled in a primary or secondary school, the public school district in which the child primarily resides.

2. In this Possession Order "child" includes each child, whether one or more, who is a subject of this suit while that child is under the age of eighteen years and not otherwise emancipated.

(b) Mutual Agreement or Specified Terms for Possession

IT IS ORDERED that the conservators shall have possession of the child at times mutually agreed to in

advance by the parties, and, in the absence of mutual agreement, it is ORDERED that the conservators shall have possession of the child under the specified terms set out in this Possession Order.

(c) Possession Schedule

1. Tasha Swadley shall have the right to possession of the child every Monday and Tuesday night of each week. Devin Hudson shall have the right to possession of the child every Wednesday and Thursday night of each week. The Devin Hudson and Tasha Swadley shall alternate the weekend possession of the child every other weekend thereafter beginning Friday at the time the child is released from daycare and ending Monday morning when school starts. If Monday is a school holiday or a holiday not Listed herein, the possession period ends at 6:OO p.m. on Monday.

2. Spring Vacation - Possession shall rotate between all three conservators beginning in 2012 when Tasha Swadley shall have possession of the child. In 2013, Devin Hudson shall have possession of the child and in 2014 James Latimer shall have possession of the child. Possession Shall rotate on a yearly basis each year thereafter in the same order.

3. The Court further finds that awarding James Latimer access to the child would not endanger the child's physical health or emotional welfare and would be in the best interest of the child. IT IS THEREFORE ORDERED as follows:

a. Visitation shall be under the supervision of Hannah's House for 4 hours every other weekend from June 2011 until October 2011. [*minor child*

A.L.] may be present at the visits but he is not required to be there.

b. Beginning in November 2011, visitation shall be unsupervised in a public place for a period of 2 hours every other week on any day of the week, so long as the parties agree and it does not interfere with school or any other scheduled activities of the child. James Latimer agrees to provide notice of at-least 48 hours in advance of the time he wishes to exercise his visitation. He further agrees to return the child to Devin Hudson or Tasha Swadley by 8 p.m. [*minor child A.L*] may be present at the visitation, but he is not required to be there. This visitation schedule shall continue until the end of January 2012.

c. Beginning in February 2012, visitation shall be unsupervised in a public place for a period of 5 hours every other week on any day of the week, so long as the parties agree and it does not interfere with school or any other scheduled activities of the child. James Latimer agrees to provide notice of at least 48 hours in advance of the time he wishes to exercise his visitation. He further agrees to return the child to Devin Hudson or Tasha Swadley by 8 p.m. [*minor child A.L.*] may be present at the visitation, but he is not required to be there. This visitation schedule shall continue until the end of April 2012.

d. Beginning in May 2012, James Latimer shall have right of unsupervised possession of the child on the first, third and fifth weekends from 12 p.m. on Saturday until 12 p.m. the following day, provided that James Latimer picks up the child from Devin Hudson or Tasha Swadley and returns the child to

that same place and that the visitation so designated does not interfere with Holiday visitation schedule set out below. This visitation schedule shall continue until June 2012. This visitation supersedes any possession order previously granted above in paragraph 1.

e. Beginning in July 2012, James Latimer shall have unsupervised possession of the child as follows: first, third and fifth weekends and every 'Thursday night from 6 p.m. to 8 p.m., provided that James Latimer picks up the child from Devin Hudson and returns the child to that same place and that the weekend so designated does not interfere with Holiday visitation schedule set out below. This visitation supersedes any possession order previously granted above in paragraph 1.

4. Holidays Unaffected by Distance

1. Christmas Holidays - Tasha Swadley shall the right to possession of the child beginning at 6:00 p.m. on the day the child is dismissed from school for the Christmas school vacation and ending at noon the day before school resumes after the holiday, except for Christmas Eve and the day after Christmas in 2011. James Latimer shall have the right of possession of the child on Christmas Eve from 8 am until 8 a.m. the following day. Devin Hudson shall have the right of possession of the child on the day after Christmas from 8 a.m. to 8 a.m. the following day.

Devin Hudson shall have the right to possession of the child beginning at 6:00 p.m. on the day the child is dismissed from school for the Christmas school vacation and ending at noon the day before school

resumes after the holiday, except for Christmas Eve and Christmas day in 2012. James Latimer shall have the right of possession of the child on Christmas Eve from 8 a.m. until 8 a.m. the following day.

Tasha Swadley shall have the right of possession of the child on Christmas Day from 8 a.m. to 8 a.m. the following day.

James Latimer shall have the right to possession of the child beginning at 6:00 p.m. on the day the child is dismissed from school for the Christmas school vacation and ending at noon the day before school resumes after the holiday, except for Christmas Day and the day after Christmas in 2013. Tasha Swadley shall have the right of possession of the child on Christmas day from 8 a.m. to 8 a.m. the following day. Devin Hudson shall have the right of possession of the child on the day after Christmas from 8 am. to 8 am. the following day.

The Christmas visitation will rotate on the schedule set out above on a yearly basis beginning in 2014 beginning with Ms. Swadley, followed by Mr. Hudson, who will be followed by Mr. Latimer.

2. Thanksgiving in Odd-Numbered Years - In odd-numbered years, Tasha Swadley shall have the right to possession of the child beginning at 6:00 p.m. on the day the child is dismissed from school for the Thanksgiving holiday and ending at 6:00 p.m. on the Sunday following Thanksgiving, except for the day after Thanksgiving. Devin Hudson shall have the right of possession of the child on the day after Thanksgiving from 8 am to 6 p.m. the following day.

4. [*Number 3 is omitted from the actual order.*] Thanksgiving in Even-Numbered Years - In even-

numbered years, James Latimer shall have the right to possession of the child beginning at 6:00 p.m. on the day the child is dismissed from school for the Thanksgiving holiday and ending at 6:00 p.m. on the Sunday following Thanksgiving, except for the day after Thanksgiving. Devin Hudson shall have the right of possession of the child on the day after Thanksgiving from 8 am to 6 p.m. the following day.

5. Child's Birthday - If a parent is not otherwise entitled under this Standard Possession Order to present possession of a child on the child's birthday, that parent shall have possession of the child and the child's minor siblings for a period of one hour to be determined by the parents, provided that that parent picks up the child from the other parent's residence and returns the child to that same place.

6. Father's Day - James Latimer shall have the right to possession of the child each year, beginning at 6:00 p.m. on the Friday preceding Father's Day and ending at 6:00 p.m. on Father's Day, provided that if Devin Hudson is not otherwise entitled under this Possession Order to present possession of the child, he shall pick up the child from Devin Hudson's or Tasha Swadley's residence and return the child to that same place.

7. Mother's Day - Tasha Swadley shall have the right to possession of the child each year, beginning at 6:00 p.m. on the Friday preceding Mother's Day and ending at 6:00 p.m. on Mother's Day, provided that if Tasha Swadley is not otherwise entitled under this Possession Order to present possession of the child, she shall pick up the child from Devin

Hudson's or James Latimer's residence and return the child to that same place.

(f) Undesignated Periods of Possession

Devin Hudson shall have the right of possession of the child at all other times not specifically designated in this Possession Order for Tasha Swadley or James Latimer.

(g) General Terms and Conditions

Except as otherwise expressly provided in this Possession Order, the terms and conditions of possession of the child that apply regardless of the distance between the residence of a parent and the child are as follows:

1. Surrender of Child by Devin Hudson - Devin Hudson is ORDERED to surrender the child to Tasha Swadley and James Latimer at the beginning of each period of Tasha Swadley's and James Latimer's possession at the residence of Devin Hudson.

Surrender of Child by Tasha Swadley - Tasha Swadley is ORDERED to surrender the child to James Latimer at the beginning of each period of and James Latimer's possession at the residence of Tasha Swadley

2. Return of Child by Tasha Swadley - Tasha Swadley is ORDERED to return the child to the residence of Devin Hudson at the end of each period of possession.

Return of Child by James Latimer - James Latimer is ORDERED to return the child to the residence of Devin Hudson or Tasha Swadley at the end of each period of possession.

3. Personal Effects - Each conservator is ORDERED to return with the child the personal

effects that the child brought at the beginning of the period of possession.

4. Designation of Competent Adult - Each conservator may designate any competent adult to pick up and return the child, as applicable. IT IS ORDERED that a conservator, or a designated competent adult, be present when the child is picked up or returned.

7. [*Numbers 5 and 6 are omitted from the actual order.*] Inability to Exercise Possession - Each conservator is ORDERED to give notice to the person in possession of the child on each occasion that the conservator will be unable to exercise that conservator's right of possession for any specified period.

8. Written Notice - Written notice shall be deemed to have been timely made if received or postmarked before or at the time that notice is due.

This concludes the Possession Order.

2. *Other Parenting Plan Provisions*

In addition to all other provisions for possession provided in this order, the following periods of possession are ORDERED:

1. Halloween - Devin Hudson shall have possession of the child on Halloween every year beginning in 2011. James Latimer shall have possession of the child on the day after Halloween each year beginning in 2012.

2. Memorial Day Weekend in Even-Numbered Years - James Latimer shall have possession of the child in even-numbered years.

3. Memorial Day Weekend in Odd-Numbered Years - Devin Hudson shall have possession of the child in odd-numbered years.

4. Labor Day Weekend - Tasha Swadley shall have possession of the child for Labor Day weekend every year beginning in 2011

5. Easter Sunday - Tasha Swadley shall have possession of the child on Easter Sunday every year beginning in 2011.

6. Independence Day in Even-Numbered Years - Devin Hudson shall have possession of the child in even-numbered years.

7. Independence Day in Odd-Numbered Years - James Latimer shall have possession of the child in odd-numbered years.

8. Veteran's Day in Odd-Numbered Years - Devin Hudson shall have possession of the child in odd-numbered years.

9. Veteran's Day in Even-Numbered Years - James Latimer shall have possession of the child in even-numbered years.

5. [*I cannot explain this numbering discrepancy in the actual order.*] Participation in Educational Activities and Decisions -

All Parties shall be informed of any school trips and activities in which participation is permitted and both parents shall attend, if they both desire to attend.

6. Educational Expenses - Devin Hudson shall pay 33%, Tasha Swadley shall pay 33%, and James Latimer shall pay 33% of the cost of

a. All other expenses associated with school activities including: uniforms, class trips, activity fees, book fees, and fees for AP classes.

7. Extracurricular Activities -

Each party shall agree before enrolling the child in extracurricular activities that may occur partially while the child is with the other conservator, and, if the conservators are in agreement, they shall make their best efforts to get the child to and from those activities when the child is with that conservator.

Each conservator shall make a good-faith effort to give information to the other conservators about events and activities in the child's life like school programs, concerts, award ceremonies, plays, sports events, and other events or activities in which the child is participating.

3. ***Duration***

The periods of possession ordered above apply to each child the subject of this suit while that child is under the age of eighteen years and not otherwise emancipated.

4. ***Noninterference with Possession***

IT IS ORDERED that neither conservator shall take possession of the child during the other conservator's period of possession unless there is a prior written agreement signed by both conservators or in case of an emergency.

5. ***Termination of Orders***

The provisions of this order relating to conservatorship, possession, or access terminate only by order of this court.

Child Support

IT IS ORDERED that Tasha Swadley is obligated to pay and shall pay to Devin Hudson child support of 10% of her net earnings, with the first payment being due and payable on August 1, 2011 and a like payment being due and payable on the lst day of each month thereafter until the first month following the date of the earliest occurrence of one of the events specified below:

1. any child reaches the age of eighteen years or graduates from high school, whichever occurs later, subject to the provisions for support beyond the age of eighteen years set out below;

2. the child marries;

3. the child dies;

4. the child enlists in the armed forces of the United States and begins active service as defined by section 101 of title 10 of the United States Code; or

6. [*Number 5 is omitted from the actual order.*] the child's disabilities are otherwise removed for general purposes.

If the child is eighteen years of age and has not graduated from high school, IT IS ORDERED that Tasha Swadley's obligation to pay child support to Devin Hudson shall not terminate but shall continue for as long as the child is enrolled-

1. under chapter 25 of the Texas Education Code in an accredited secondary school in a program leading toward a high school diploma or under section 130.008 of the. Education Code in courses for joint high school and junior college credit and is complying with the minimum attendance requirements of subchapter C of chapter 25 of the Education Code or

2. on a full-time basis in a private secondary school in a program leading toward a high school diploma and is complying with the minimum attendance requirements imposed by that school.

IT IS ORDERED that James Latimer is obligated to pay and shall pay to Devin Hudson child support of $125.00 per month, with the first payment being due and payable on August 1, 2011 and a like payment being due and payable on the 1st day of each month thereafter until the first month following the date of the earliest occurrence of one of the events specified below:

1. the child reaches the age of eighteen years or graduates from high school, whichever occurs later, subject to the provisions for support beyond the age of eighteen years set out below;

2. the child marries;

3. the child dies;

4. the parent-child relationship is terminated based on genetic testing that excludes the obligor as the child's genetic father;

5. the child enlists in the armed forces of the United States and begins active service as defined by section 101 of title 10 of the United States Code; or

6. the child's disabilities are otherwise removed for general purposes.

If the child is eighteen years of age and has not graduated from high school, IT IS ORDERED that James Latimer's obligation to pay child support to Devin Hudson shall not terminate but shall continue for as long as the child is enrolled-

1. under chapter 25 of the Texas Education Code in an accredited secondary school in a program leading

toward a high school diploma or under section 130.008 of the Education Code in courses for joint high school and junior college credit and is complying with the minimum attendance requirements of subchapter C of chapter 25 of the Education Code or

2. on a full-time basis in a private secondary school in a program leading toward a high school diploma and is complying with the minimum attendance requirements imposed by that school.

Withholding from Earnings

IT IS ORDERED that any employer of Tasha Swadley and James Latimer shall be ordered to withhold from earnings for child support from the disposable earnings of Tasha Swadley and James Latimer for the support of [E.G.L.].

IT IS FURTHER ORDERED that all amounts withheld from the disposable earnings of Tasha Swadley and James Latimer by the employer and paid in accordance with the order to that employer shall constitute a credit against the child support obligation. Payment of the full amount of child support ordered paid by this order through the means of withholding from earnings shall discharge the child support obligation. If the amount withheld from earnings and credited against the child support obligation is less than 100 percent of the amount ordered to be paid by this order, the balance due remains an obligation of Tasha Swadley and James Latimer, and it is hereby ORDERED that Tasha Swadley and James Latimer pay the balance due directly to the state disbursement unit specified below.

On this date the Court authorized the issuance of an Order of Notice to Withhold Income for Child Support.

Payment

IT IS ORDERED that all payments shall be made through the state disbursement unit at Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, Texas 78265-9791, and thereafter promptly remitted to Devin Hudson for the support of the child. IT IS ORDERED that each party shall pay, when due, all fees charged to that party by the state disbursement unit and any other agency statutorily authorized to charge a fee.

Change of Employment

IT IS FURTHER ORDERED that Tasha Swadley and James Latimer shall notify this Court and Devin Hudson by U.S. certified mail, return receipt requested, of any change of address and of any termination of employment. This notice shall be given no later than seven days after the change of address or the termination of employment. This notice or a subsequent notice shall also provide the current address of Tasha Swadley and James Latimer and the name and address of her/his current employer, whenever that information becomes available.

Clerk's Duties

IT IS ORDERED that, on the request of a prosecuting attorney, the title N-D agency, the friend of the Court, a domestic relations office, Devin Hudson, Tasha Swadley, James Latimer, or an

attorney representing Devin Hudson, Tasha Swadley or James Latimer, the clerk of this Court shall cause a certified copy of the Order/Notice to Withhold Income for Child Support to be delivered to any employer.

Suspension of Withholding from Earnings

The Court finds that good cause exists that no order to withhold from earnings for child support should be delivered to any employer of Tasha Swadley and James Latimer as long as no delinquency or other violation of this child support order occurs and as long as the Office of the Attorney General Child Support Division is not providing services to Devin Hudson. For the purpose of this provision, a delinquency has occurred if Tasha Swadley and James Latimer has been in arrears for an amount due for more than thirty days or the amount of the arrearages equals or is greater than the amount due for a one month period. If a delinquency or other violation occurs or if the Office of the Attorney General Child Support Division begins providing services to Devin Hudson, the clerk shall deliver the order to withhold earnings as provided above.

ACCORDINGLY, IT IS ORDERED that, as long as no delinquency or other violation of this child support order occurs and as long as the Office of the Attorney General Child Support Division is not providing services to Devin Hudson, all payments shall be made through the state disbursement unit and thereafter promptly remitted to Devin Hudson for the support of the child. If a delinquency or other violation occurs or if the Office of the Attorney

General Child Support Division begins providing services to Devin Hudson, all payments shall be made in accordance with the order to withhold earnings as provided above.

Health Care

1. IT IS ORDERED that Devin Hudson, Tasha Swadley and James Latimer shall each provide medical support for each child as set out in this order as additional child support for as long as the Court may order Devin Hudson, Tasha Swadley and James Latimer to provide support for the child under sections 154,001 and 154.002 of the Texas Family Code. Beginning on the day Devin Hudson, Tasha Swadley and James Lather's actual or potential obligation to support a child under sections 154.001 and 154.002 of the Family Code terminates, IT IS ORDERED that Devin Hudson, Tasha Swadley and James Latimer are discharged from the obligations set forth in this medical support order with respect to that child, except for any failure by a parent to fully comply with those obligations before that date. IT IS FURTHER ORDERED that the cash medical support payments ordered below are payable through the state disbursement unit and subject to the provisions for withholding from earnings provided above for other child support payments.

2. Definitions -

"Health Insurance" means insurance coverage that provides basic health-care services, including usual physician services, office visits, hospitalization, and laboratory, X-ray, and emergency services, that may be provided through a health maintenance

organization or other private or public organization, other than medical assistance under chapter 32 of the Texas Human Resources Code.

"Reasonable cost" means the total cost of health insurance coverage for all children for which Tasha Swadley and James Latimer is responsible under a medical support order that does not exceed 9 percent of Tasha Swadley's and James Latimer's annual resources, as described by section 154.062(b) of the Texas Family Code.

"Reasonable and necessary health-care expenses not paid by insurance and incurred by or on behalf of a child" include, without limitation, any copayments for office visits or prescription drugs, the yearly deductible, if any, and medical, surgical, prescription drug, mental health-care services, dental, eye care, ophthalmological, and orthodontic charges. These reasonable and necessary health-care expenses do not include expenses for travel to and from the health-care provider or for nonprescription medication.

"Furnish" means:

a. to hand deliver the document by a person eighteen years of age or older either to the recipient or to a person who is eighteen years of age or older and permanently resides with the recipient;

b. to deliver the document to the recipient by certified mail, return receipt requested, to the recipient's last known mailing or residence address; or

c. to deliver the document to the recipient at the recipient's last known mailing or residence address using any person or entity whose principal business is that of a courier or deliverer of papers or

documents either within or outside the United States.

3. Findings on Health Insurance Availability-Having considered the cost, accessibility, and quality of health insurance coverage available to the parties, the Court finds:

Health insurance is available or is in effect for the child through Devin Hudson's employment or membership in a union, trade association, or other organization at a reasonable cost of $50.18 per month.

IT IS FURTHER FOUND that the following orders regarding health-care coverage are in the best interest of the child.

4. Provision of Health-Care Coverage -

As child support, Devin Hudson is ORDERED to continue to maintain health insurance for each child who is the subject of this suit that covers basic health-care services, including usual physician services, office visits, hospitalization, laboratory, X-ray, and emergency services.

Devin Hudson is ORDERED to maintain such health insurance in full force and effect on each child who is the subject of this suit as long as child support is payable for that child. Devin Hudson is ORDERED to convert any group insurance to individual coverage or obtain other health insurance for each child within fifteen days of termination of his employment or other disqualification from the group insurance. Devin Hudson is ORDERED to exercise any conversion options or acquisition of nay health insurance in such a manner that the resulting insurance equals or exceeds that in effect immediately before the change.

Devin Hudson is ORDERED to furnish Tasha Swadley and James Latimer and the Office of the Attorney General Child Support Division a true and correct copy of the health insurance policy or certification and a schedule of benefits within 30 days of the signing of this order. Devin Hudson is ORDERED to furnish Tasha Swadley and James Latimer the insurance cards and any other forms necessary for use of the insurance within 30 days of the signing of this order. Devin Hudson is ORDERED to provide, within three days of receipt by him, to Tasha Swadley and James Latimer any insurance checks, other payments, or explanations of benefits relating to any medical expenses for the child that Tasha Swadley and James Latimer paid or incurred.

Pursuant to section 1504.051 of the Texas Insurance Code, it is ORDERED that if Devin Hudson is eligible for dependent health coverage but fails to apply to obtain coverage for the child, the insurer shall enroll the child on application of Tasha Swadley or others as authorized by law.

Pursuant to section 154.182 of the Texas Family Code, Tasha Swadley and James Latimer is ORDERED to pay Devin Hudson cash medical support for reimbursement of health insurance premiums, as additional child support, $16.56 per month, with the first installment being due and payable on August lst and a like installment being due and payable on or before the lst day of each month until the termination of current child support for him.

IT IS ORDERED that the cash medical support provisions of this order shall be an obligation of the

estate of Tasha Swadley and James Latimer and shall not terminate on either of their deaths.

Pursuant to section 154.183(c) of the Texas Family Code, the reasonable and necessary health-care expenses of the child that are not reimbursed by health insurance are allocated as follows: Devin Hudson is ORDERED to pay 34 percent, Tasha Swadley is ORDERED to pay 33 percent and James Latimer is ORDERED to pay 33 percent of the unreimbursed health-care expenses if, at the time the expenses are incurred, Devin Hudson is providing health insurance as ordered.

The party who incurs a health-care expense on behalf of a child is ORDERED to submit to the other party all forms, receipts, bills, statements, and explanations of benefits reflecting the uninsured portion of the health-care expenses within thirty days after he or she receives them. The non-incurring party is ORDERED to pay his or her percentage of the uninsured portion of the health-care expenses either by paying the health-care provider directly or by reimbursing the incurring party for any advance payment exceeding the incurring party's percentage of the uninsured portion of the health-care expenses within thirty days after the non-incurring party receives the forms, receipts, bills, statements, and explanations of benefits.

These provisions apply to all unreimbursed health-care expenses of a child who is the subject of this suit that are incurred while child support is payable for any child.

5. Secondary Coverage - IT IS ORDERED that if a party provides secondary health insurance coverage

for the child, both parties shall cooperate fully with regard to the handling and filing of claims with the insurance carrier providing the coverage in order to maximize the benefits available to the child and to ensure that the party who pays for health-care expenses for the child is reimbursed for the payment from both carriers to the fullest extent possible.

6. Compliance with Insurance Company Requirements - Each party is ORDERED to conform to all requirements imposed by the terms and conditions of the policy of health insurance covering the child in order to assure maximum reimbursement or direct payment by the insurance company of the incurred health-care expense, including but not limited to requirements for advance notice to any carrier, second opinions, and the like. Each party is ORDERED to attempt to use "preferred providers," or services within the health maintenance organization, if applicable; however, this provision shall not apply if emergency care is required. Disallowance of the bill by a health insurer shall not excuse the obligation of either party to make payment; however, if a bill is disallowed or the benefit reduced because of the failure of a party to follow insurance procedures or requirements, IT IS ORDERED that the party failing to follow the insurance procedures or requirements shall be wholly responsible for the increased portion of that bill.

7. Claims - Except as provided in this paragraph, the party who is not carrying the health insurance policy covering the child is ORDERED to furnish to the party carrying the policy, within fifteen days of receiving them, any and all forms, receipts, bills, and

statements reflecting the health-we expenses the party not carrying the policy incurs on behalf of the child. In accordance with section 1204.251 and 1504.055(a) of the Texas Insurance Code, IT IS ORDERED that the party who is not carrying the health insurance policy covering the child, at that party's option, may file any claims for health-care expenses directly with the insurance carrier with and from whom coverage is provided for the benefit of the child and receive payments directly from the insurance company. Further, for the sole purpose of section 1204.251 of the Texas Insurance Code, Tasha Swadley is designated the managing conservator or possessory conservator of the child.

The party who is carrying the health insurance policy covering the child is ORDERED to submit all forms required by the insurance company for payment or reimbursement of health-care expenses incurred by either party on behalf of a child to the insurance carrier within fifteen days of that party's receiving any form, receipt, bill, or statement reflecting the expenses.

8. Constructive Trust for Payments Received - JT IS ORDERED that any insurance payments received by a party from the health insurance carrier as reimbursement for health-care expenses incurred by or on behalf of a child shall belong to the party who paid those expenses. IT IS FURTHER ORDERED that the party receiving the insurance payments is designated a constructive trustee to receive any insurance checks or payments for health-care expenses paid by the other party, and the party carrying the policy shall endorse and forward the checks or payments, along with any explanation of

benefits received, to the other party within three days of receiving them.

9. WARNING - A PARENT ORDERED TO PROVIDE HEALTH INSURANCE OR TO PAY THE OTHER PARENT ADDITIONAL CHILD SUPPORT FOR THE COST OF HEALTH INSURANCE WHO FAILS TO DO SO IS LIABLE FOR NECESSARY MEDICAL EXPENSES OF THE CHILD, WITHOUT REGARD TO WHETHER THE EXPENSES WOULD HAVE BEEN PAID IF HEALTH INSURANCE HAD BEEN PROVIDED, AND FOR THE COST OF HEALTH INSURANCE PREMIUMS OR CONTRIBUTIONS, IF ANY, PAID ON BEHALF OF THE CHILD.

Miscellaneous Child Support Provisions

Support as Obligation of Estate

IT IS ORDERED that the provisions for child support in this order shall be an obligation of the estate of Tasha Swadley and James Latimer and shall not terminate on the death of Tasha Swadley and James Latimer. Payments received for the benefit of the child, including payments from the Social Security Administration, Department of Veterans Affairs or other governmental agency or life insurance proceeds, annuity payments, trust distributions, or retirement survivor benefits, shall be a credit against this obligation. Any remaining balance of the child support is an obligation of Tasha Swadley's and James Latimer's estate.

Termination of Orders on Marriage of Parties but Not on Death of Obligee

The provisions of this order relating to current child support terminate only by order of this court. The obligation to pay child support under this order does not terminate on the death of Devin Hudson but continues as an obligation to [*E.G.L.*].

Required Information

The information required for each party by section 105.006(a) of the Texas Family Code is as follows:
Name: Devin Hudson
Social Security number: [*redacted*]
Driver's license number and issuing state: [*redacted*]
Current residence address: 407 Daisy, Allen, Texas 75013
Mailing address: 407 Daisy, Allen, Texas 75013
Home telephone number: [*redacted*]
Name of employer: [*redacted*]
Address of employment: Dallas Texas
Work telephone number: [*redacted*]
Name: Tasha Swadley
Social Security number: [*redacted*]
Driver's license number and issuing state: [*redacted*]
Current residence address: 229 Hardwicke, Little Elm, Texas 75068
Mailing address: 229 Hardwicke, Little Elm, Texas 75068
Home telephone number: [*redacted*]
Name of employer: [*redacted*]
Address of employment: McKinney, Texas
Work telephone number: [*redacted*]
Name: James Latimer
Social Security number: [*redacted*]

Driver's license number and issuing state: [*redacted*]
Current residence address:
Mailing address: P.O. Box 93972, Southlake, Texas 76092
Home telephone number: [*redacted*]
Name of employer: [*redacted*]
Address of employment: Southlake, Texas
Work telephone number: [*redacted*]

Required Notices

EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF EMPLOYMENT, DRIVER'S LICENSE NUMBER, AND WORK TELEPHONE NUMBER. THE PARTY IS ORDERED TO GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF THE PARTY DOES NOT KNOW OR COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO PROVIDE 60 DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE ON OR BEFORE THE FIFTH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE CHANGE.

THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY CONTINUES AS

LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD.

FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY WITH THE CHANGE IN THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO $500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEYS FEES AND COURT COSTS.

Notice shall be given to the other party by delivering a copy of the notice to the party by registered or certified mail, return receipt requested. Notice shall be given to the Court by delivering a copy of the notice either in person to the clerk of this Court or by registered or certified mail addressed to the clerk at 2100 Bloomdale Road, McKinney, Texas 75071. Notice shall be given to the state case registry by mailing a copy of the notice to State Case Registry, Contract Services Section, MCO46S, P.O. Box 12017, Austin, Texas 7871 1-2017.

NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE TERMS OF CHILD CUSTODY SPECIFIED IN THIS ORDER. A PEACE

OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CLAIM, CIVIL OR OTHERWISE, REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THE ORDER THAT RELATE TO CHILD CUSTODY. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS $10,000.

Warnings

WARNINGS TO PARTIES: FAILURE TO OBEY A COURT ORDER FOR CHILD SUPPORT OR FOR POSSESSION OF OR ACCESS TO A CHILD MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO $500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEYS FEES AND COURT COSTS.

FAILURE OF A PARTY TO MAKE A CHILD SUPPORT PAYMENT TO THE PLACE AND IN THE MANNER REQUIRED BY A COURT ORDER MAY RESULT IN THE PARTY'S NOT RECEIVING CREDIT FOR MAKING THE PAYMENT.

FAILURE OF A PARTY TO PAY CHILD SUPPORT DOES NOT JUSTIFY DENYING THAT PARTY COURT-ORDERED POSSESSION OF OR ACCESS TO A CHILD. REFUSAL BY A PARTY TO ALLOW POSSESSION OF OR ACCESS TO A CHILD DOES NOT JUSTIFY FAILURE TO PAY COURT-ORDERED CHILD SUPPORT TO THAT PARTY.

Attorney's Fees

IT IS ORDERED that attorney's fees are to be borne by the party who incurred them.

Costs

IT IS ORDERED that costs of court are to be borne by the party who incurred them.

Discharge from Discovery Retention Requirement

IT IS ORDERED that the parties and their respective attorneys are discharged from the requirement of keeping and storing the documents produced in this case in accordance with rule 191.4(d) of the Texas Rules of Civil Procedure.

Relief Not Granted

IT IS ORDERED that all relief requested in this case and not expressly granted is denied.

Date of Order

This order judicially PRONOUNCED AND RENDERED in court at McKinney, Collin County, Texas, on June 8, 2011 and further noted on the court's docket sheet on the same date, but signed on July 28, 2011

s/ John R. Roach, Jr.
JUDGE PRESlDING

APPROVED AND CONSENTED TO AS TO BOTH FORM AND SUBSTANCE:

s/ Devin Hudson

s/ Tasha Swadley

APPENDIX C

IN THE SUPREME COURT OF TEXAS

NO. 12-0921
IN THE INTEREST OF E.G.L., A CHILD
Collin County,
5th District.

January 18, 2013

Petitioner's petition for review, filed herein in the above numbered and styled case, having been duly considered, is ordered, and hereby is denied.

April 19, 2013

Petitioner's motion for rehearing of petition for review, filed herein in the above numbered and styled case, having been duly considered, is ordered, and hereby is denied.

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I, BLAKE A. HAWTHORNE, Clerk of the Supreme Court of Texas, do hereby certify that the above and attached is a true and correct copy of the orders of the Supreme Court of Texas in the case numbered and styled as above, as the same appear of record in the minutes of said Court under the date shown.

It is further ordered that petitioner pay all costs incurred on this petition.

WITNESS my hand and seal of the Supreme Court of Texas, at the City of Austin, this the 22nd day of April, 2013.

s/ Blake A. Hawthorne
Blake A. Hawthorne, Clerk
By Kathy Sandoval, Deputy Clerk