

1ST CIRCUIT COURT
STATE OF HAWAII
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E. ALAGAO
CLERK

IN THE FAMILY COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

DARA HOLBROOK-YATSUSHIRO, fka) DARA HOLBROOK)	UCCJEA NO. 03-1-0011
Plaintiff,)	FINDINGS OF FACT AND
vs.)	CONCLUSIONS OF LAW
LAWRENCE HOLBROOK)	<u>SHORT TRIAL:</u>
Defendant.)	Date: December 22, 2006
	Time: 9:00 a.m.
	Judge: Christine Kuriyama

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A short trial having been held on December 22, 2006 before the presiding judge, the Honorable Christine Kuriyama, and the parties, Plaintiff Dara Holbrook nka DARA HOLBROOK-YATSUSHIRO ("Plaintiff") and Defendant LAWRENCE HOLBROOK present, along with Plaintiff's counsel, Lynne Jenkins McGivern, the Custody Evaluator Stacy Fukuhara-Barclay and the guardian ad litem, Malia Taum, also present. The court having

taken judicial notice of the entire record and file in this matter, and based on the totality of the circumstances of this case, as well as the testimony presented by the parties, Ms. Taum and Ms. Fukuhara-Barclay, and the exhibits received into evidence hereby enters its Findings of Fact and Conclusions of Law pursuant to Rule 52(a).

These Findings of Fact and Conclusions of Law shall be construed as follows:

1. If it is later determined that a Finding of Fact should properly be deemed to be a Conclusion of Law, the Court so concludes on those legal issues.
2. If it is later determined that a Conclusion of Law should properly be deemed a Finding of Fact, the Court so finds on those factual issues.
3. To the extent that any of the following Findings of Fact and Conclusions of Law includes a mixed Finding of Fact and Conclusion of Law, each shall be given full effect.

I. FINDINGS OF FACT

A. RELEVANT PROCEDURAL HISTORY

4. Plaintiff Dara Holbrook-Yatsushiro, [hereinafter referred to as “Mother”] filed a UCCJEA action against Defendant, Lawrence Holbrook [hereinafter referred to as “Father”] on February 28, 2003.

5. A bifurcated divorce ensued, with the State of Hawaii resolving child custody and visitation and related financial issues, and with all other property matters resolved in the Commonwealth of Virginia, after a Virginia

court found its court to be a *forum non conveniens* for custody and visitation matters.

6. On September 23, 2003, after a trial before the Honorable William K. Wallace III, a Decision and Order and a related Order Awarding Child Custody and Visitation were filed. Based on the credible testimony of Mother and her witnesses, the court found that it was in the best interests of the children that Mother be awarded sole legal and physical custody of the parties two children Kirstin (DOB 12/16/94) and Kalen (DOB: 09/20/97). Father was awarded supervised visitation only with the children, with the possibility of unsupervised visitation at a later date, as discussed below. In addition, the court specifically rejected Father's testimony that he was the victim in the case and found that he was not credible. The court found that Father did physically abuse Mother during their relationship. The court also recognized the need for and appointed a child therapist, guardian ad litem and custody evaluator. Further, the court ordered that the custody evaluator/guardian ad litem would work in conjunction with the children's therapists, the parties and the children to reunify the children with Father. Together with the children's therapist/s, the custody evaluator/guardian ad litem was to determine when increased visitation with Father would be in the children's best interest. Having recognized that Father had been abusive to Mother throughout the relationship, Father was also ordered to enter into therapy, including anger management counseling/domestic violence intervention until clinically discharged.

7. On October 3, 2003, Father filed a Motion for Reconsideration and Motion for Court Ordered Mediation, asking the court to reconsider its earlier ruling and to order the parties into mediation. Upon consideration of the records and files, and upon consideration of the pleadings filed therein, the court denied Father's Motion on October 22, 2003.

8. Between October 2003 and February 2006, numerous motions were filed by Father in this case. Upon the court's denial of Father's motions, Father filed several Motions for Reconsideration, which were all denied by the court. During this time, on June 2, 2005, the court had ordered Father to get a private rental to provide the children with more privacy, safety and security, and recommended that Father buy an economy car to reduce unnecessary hardship on the children.

9. On August 31, 2005, Dr. William Tsushima, the psychologist retained to evaluate the parties and the children, wrote to the guardian ad litem, Ms. Malia Taum, informing her that he had learned about matters impacting the safety and welfare of Kirstin and to a lesser extent her younger brother, Kalen. Dr. Tsushima informed Ms. Taum that on August 9 and 22, 2005 he interviewed Kirstin who disclosed that Father frequently slapped her on the back of the head with considerable force. Dr. Tsushima also interviewed Kalen on August 10 and 23, 2005. Kalen disclosed that Father had slapped Kirstin's head "100 times" with considerable force. Based on his findings, Dr. Tsushima requested the Ms. Taum intervene on the children's behalf.

10. Based on Dr. Tsushima's disclosures, Ms. Taum immediately contacted the court and requested a status conference before Judge Kuriyama. Said conference was set for the following day, September 1, 2005 to address the issue of modifying or altogether suspending Kirstin's visitation with Father.

11. At the status conference on September 1, 2005, the court immediately suspended visitation between Father and the parties' daughter, Kirstin. A series of review hearings were set by the court throughout the following year to monitor Father's compliance with therapy and treatment to deal with concerns about his ongoing abusiveness. However, Father failed to comply with these treatments and therapy and did not participate in any therapy with Kirstin's therapist, Dr. Aimee McCullough, per the court's order.

12. On February 9, 2006, the parties appeared before Judge Kuriyama and reiterated their agreement to have the evaluations done by Dr. Tsushima provided to the parties' current therapists and the children's therapists as well as the parenting coordinators. The parties further agreed that Annabel Murray and Stacy Fukuhara-Barkley would be named as the parenting coordinators and would have full powers therefrom regarding the visitation plan in accordance with prior orders. The parenting coordinators were also awarded tie-breaking authority.

13. On August 23, 2006, Stacy Fukuhara-Barclay filed a Motion for Leave to Withdraw as Parenting Coordinator. Ms. Fukuhara-Barclay cited to

Father's hostility towards her, including Father's accusation that she "abused him" and was "very insulting." Pursuant to her court assigned duties, Ms. Fukuhara-Barclay submitted a Parenting Plan to the parties on or around May 2006. Ms. Fukuhara-Barclay stated that Father was very upset with the parenting plan and sent her very nasty e-mails, filled with anger and bitterness. Ms. Fukuhara-Barclay concluded that she could not remain as parenting coordinator in the case because she did not feel safe speaking with Father and felt that any time she did not agree with Father, he became frighteningly nasty and insulting. Based on these experiences, Ms. Fukuhara-Barclay requested that she be allowed to withdraw.

14. On August 24, 2006, Father filed a Motion and Affidavit for Post-Decree Relief, seeking to: modify visitation with Kirstin, remove the guardian ad litem and remove the parenting coordinator. Father alleged that because there was no visitation provision for him to see Kirstin, the guardian ad litem and the parenting coordinator had "failed to serve the best interests of the child." In addition, Father sought an order: removing any requirements on his housing situation (Father resides in a boarding house type rental – with little to no privacy from other adult tenants, no lockable bathroom facilities or private cooking facilities); removing all court appointed service providers due to their failure to see to the "best interests of the child"; requiring Mother to implement communications between Father and the children; and replacing the Parenting Coordinator's proposed parenting plan with his own.

15. On or around September 19, 2006, Ms. Fukuhara-Barclay filed a Declaration with the court, stating that pursuant to her duties as the parenting coordinator, she was immediately terminating Father's visits with Kalen due to reported physical abuse of Kalen by Father. Based on Kalen's reports of abuse, consultations with the guardian ad litem and Kalen's therapist, Dr. Loo, Ms. Fukuhara-Barclay determined that they were unanimously concerned for Kalen's safety and the visits should be ceased.

16. On September 25, 2005, Father filed a Motion and Affidavit for Post-Decree Relief seeking to modify visitation by restoring visitation between Father and Kalen, claiming that the allegations of violence against Kalen by Father were without merit.

17. At the hearing on October 11, 2006, the court ordered that the issues raised by Defendant's motions, as well as Ms. Fukuhara-Barclay's motion, be set for a short trial on December 22, 2006. The following findings were made at the short trial thereon:

B. VISITATION BETWEEN FATHER AND KIRSTIN

18. Father has been physically abusive to Kirstin.

19. Both the guardian ad litem, Malia Taum, and psychologist, Dr. Tsushima, attested to Kirstin's abuse at Father's hands.

20. The court finds the testimony of Ms. Taum and the findings of Dr. Tsushima to be credible and that Kirstin was the victim of physical abuse by Father.

21. The court further finds that Father has failed to work with Kirstin's therapist, Dr. McCullough, as previously ordered by the court.

22. In addition, the court finds that Father has failed to comply with its prior order requiring Father to get appropriate housing and prior recommendation to get a car (in lieu of his studio boarding house type accommodation and transporting the children primarily on foot, by bicycle and by bus.)

23. The court also finds that testimony has established that visitations between Kirstin and Father to be harmful to Kirstin at this time. When unsupervised visits with Father were in effect prior to the suspension of visitation, Kirstin was emotionally decompensating, exhibiting alarming behaviors of mentally illness, doing poorly in school and was generally manifesting indicators of low self-esteem when forced to see Father. Since the visits with Father have stopped, Kirstin has turned into a "new person"; she is thriving, doing well in school, manifesting self-esteem and confidence.

C. VISITATION BETWEEN FATHER AND KALEN

24. Father has been physically abusive to Kalen.

25. Both the guardian ad litem, Malia Taum, and Ms. Fukuhara-Barclay attested to Kalen's reports of abuse at Father's hands.

26. The court finds the testimony of Ms. Taum and the findings of Ms. Fukuhara-Barclay to be credible and that Kalen was the victim of physical abuse by Father.

27. The court finds that based upon Father's failure to comply with prior court orders and his long history as an abuser, as well as his physical abuse of Kalen, that the testimony has established that visitations between Kalen and Father to be harmful to Kalen at this time.

D. OVERALL VISITATION BETWEEN FATHER AND THE CHILDREN

28. The children have been abused by Father and have been hurt. As such, the court cannot and will not force visitation between Father and either child.

29. Forcing visitation between Father and the children will not be in

At this time, it is not in either of the children's best interests to

The court finds that it is up to Father to make his relationship with the children work. Father cannot force himself on the children.

The court cannot and will not force visitation in this case.

It has been found that the children have been harmed in this

The court has been involved for several years in this case because the children have been harmed and hurt by Father.

34. The court needs to look out for the safety and welfare of both children, and must determine what is in their best interest, which includes their psychological, physical and emotional well-being.

35. At this time, the court finds that this means no visitation for Father, and requires continued therapy for Father and the children.

E. FATHER'S ALLEGATIONS THAT MOTHER IS INTERFERING WITH FATHER'S RELATIONSHIP WITH THE CHILDREN

36. The court finds that Father's allegations that Mother is interfering with his visitation and/or trying to turn the children against him are not credible.

37. The court further finds Mother to be a credible witness and believes that she would encourage and help foster Father's relationship with the children, if it were not for his ongoing abusiveness towards the children. The effort cannot just come from Mother's or the children's end. Father must also make an effort, and the court finds that he has failed to do so.

F. FATHER'S LONG HISTORY AS AN ABUSER

38. The court finds that Father has a long history as a domestic violence perpetrator. Based on the records and files of this case, as well as prior orders, the court finds that Father has abused Mother, Kirstin and Kalen.

39. The court also finds that Father has anger and control issues, which he has exhibited beyond Mother to include court appointed individuals in this case. Specifically, the court finds that Ms. Fukuhara-Barclays' testimony about Father's anger, bitterness and insulting behavior towards her to be credible, and Father's unwillingness to cooperate with recommendations disagreeable to him to be detrimental to the parenting coordinator system. As such, the court grants Ms. Fukuhara-Barclay's request to withdraw from this case, due to her concerns regarding safety and non-payment.

40. In total, the court recognizes that Father is in need of therapy and must continue to see his therapist, Dr. Kevin Connors.

41. Father shall also continue with therapy, in hopes that his issues will be resolved and he will someday be able to reestablish visitation with the children.

G. THE CHILDREN'S THERAPISTS

42. The court finds that it is in the best interests of the children to continue working with their therapists as deemed necessary until they are clinically discharged, and to follow the recommendations of said therapists regarding visitation between Father and either child.

43. Due to the extensive domestic violence history and other issues in this case, it is necessary that the children continue to obtain whatever therapy they may require.

44. The court finds that the children need their therapists and they can speak to their therapists.

45. The court finds that it will be highly beneficial to have the different therapists communicate with each other and work with each other to help reunify Father and the children. Specifically, the court finds that it is important for Dr. Connors (Father's therapist) to be able to communicate directly with Dr. McCullough (Kirstin's therapist) and Dr. Loo (Kalen's therapist).

46. It is in the children's best interests for the therapists to communicate with one another regarding the children, and as such the parties shall sign releases to effect such communication.

47. In order to put himself in a position to potentially seek visitation with the children in the future, Father must work with the children's therapists and cooperate with their recommendations.

H. FATHER'S NEED FOR SUITABLE HOUSING

48. The court finds Father's current living situation to be not suitable for visitation with the children.

49. Father continues to live in a public boarding house type accommodation which is not suitable for children although Father makes approximately \$54,000/year and reports a substantial surplus in his financials each month.

50. There is no privacy for the children, which they have complained about, no private bathing facilities or private kitchen facilities.

51. Despite prior court orders and reminders that Father needs to obtain a more normative and private living situation as a precondition to recommencing visitation with both children, Father has failed to do so.

52. The court finds Father's claim that he has failed to obtain suitable housing due to insufficient income not to be credible.

II. CONCLUSIONS OF LAW

1. It is in the best interests of the minor children that Father's motions be denied. Specifically, it is in the best interest of the children that visitation not be ordered at this time.

2. Due to her concerns regarding safety and non-payment, Ms. Fukuhara-Barclay is allowed to withdraw from the case as the parenting coordinator.

3. It is in the children's best interest that the guardian ad litem, Malia Taum, remain on this case in light of Ms. Fukuhara-Barclay's withdrawal.

4. All prior orders not inconsistent with this current order remain in full force and effect.

DATED: Honolulu, Hawaii, JUL 09 2007

CHRISTINE E. KURIYAMA

Judge of the Above-Entitled Court



SEAL

Copies to: Paul A. Tomar, Esq.
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