

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF VERMONT

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JANET JENKINS, ET AL.,))	
))	
Plaintiffs,))	
))	Docket No. 2:12-cv-00184
v.))	
))	
KENNETH L. MILLER, ET AL.,))	
))	
Defendants.))	
))	
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**DEFENDANTS LIBERTY COUNSEL AND RENA M. LINDEVALDSEN’S
STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION
FOR PARTIAL SUMMARY JUDGMENT AS TO ALL CLAIMS PLAINTIFF JANET
JENKINS PURPORTS TO BRING AS NEXT FRIEND OF ISABELLA MILLER**

Pursuant to Fed. R. Civ. P. 56 and Local Rule 56(a), Defendants Liberty Counsel, Inc. (“Liberty Counsel”) and Rena M. Lindevaldsen (“Lindevaldsen”) (collectively “Defendants”), by and through the undersigned counsel, herby submit the following Statement of Undisputed Material Facts.

A. Plaintiff Has Purported to Bring Next Friend Claims on behalf of Isabella Miller Solely by Virtue of Isabella’s Former Status as a Minor Child.

1. Plaintiff Janet Jenkins (“Jenkins”) filed her initial Complaint in this matter on August 14, 2012. (Dkt. 1, Complaint). In her Complaint, Jenkins brought several claims for herself and as purported next friend of Isabella Miller (“Isabella”). (Dkt. 1, Complaint, “Compl.,” at 1 (“JANET JENKINS, for herself and as next friend of ISABELLA MILLER-JENKINS, a/k/a ISABELLA MILLER”)). In her initial Complaint, Jenkins only purported to bring her next friend claims by virtue of Isabella’s status as a minor. (Compl. ¶6 (noting Isabella was “a minor child” bringing her claims through Jenkins)).

2. Jenkins subsequently amended her complaint on November 26, 2012. (Dkt. 59, Amended Complaint, “Am. Compl.”). In that iteration, Jenkins brought several claims for herself and as purported next friend of Isabella. (Am. Compl. at 1 (“JANET JENKINS, for herself and as next friend of ISABELLA MILLER-JENKINS, a/k/a ISABELLA MILLER”). In her Amended Complaint, Jenkins continued to bring her purported next friend claims ONLY by virtue of Isabella’s status as a minor. (Am. Compl. ¶6 (noting Isabella was “a minor child” bringing her claims through Jenkins).

3. Jenkins again amended her complaint on May 4, 2017. (Dkt. 223, Revised Second Amended Complaint, “RSAC”). This is the operative version of the complaint. In her RSAC, Jenkins continues to assert several claims for herself and as purported next friend of Isabella Miller (“Isabella”). (RSAC. at 1 (“JANET JENKINS, for herself and as next friend of ISABELLA MILLER-JENKINS, a/k/a ISABELLA MILLER”). In her RSAC, Jenkins only purports to bring her next friend claims by virtue of Isabella’s status as a minor. (RSAC ¶6 (noting Isabella was “a minor child” bringing her claims through Jenkins).

4. In her pleadings in this matter, Jenkins has confirmed her position that her status as next friend of Isabella was based solely on her status as a minor. (Dkt. 261, Plaintiff’s Response in Opposition to Motion to Dismiss, at 18 (“Jenkins, for herself and as next friend of Isabella, filed the instant lawsuit on August 14, 2012”).

5. This Court has likewise confirmed that Jenkins has brought her claims on behalf of Isabella by virtue of her status as a minor child. (Dkt. 220, Opinion and Order, at 1). In its September 29, 2017 order on Defendants’ motions to dismiss, this Court likewise noted that Jenkins was only bringing her claims on behalf of Isabella by virtue of her status as an “infant” or minor. (Dkt. 277, Opinion and Order at 31).

6. In the, the RSAC, Jenkins purports to bring next friend claims on behalf of Isabella for the intentional tort of kidnapping (RSAC, ¶¶64-65), conspiracy to commit kidnapping (*id.* ¶65), aiding and abetting kidnapping (*id.*), and conspiracy to violate civil rights under 42 U.S.C. §1985. (*Id.* ¶66-67).

7. This Court recognized that Jenkins' intentional tort of kidnapping charge was essentially a custodial interference claim (dkt. 277, at 17) and dismissed Jenkins' purported next friend claim under that count. (*Id.* at 30-31).

8. Therefore, the only remaining next friend claims Jenkins purports to bring are conspiracy and aiding and abetting under Vermont law and conspiracy to violate civil rights under federal law.

B. Isabella Has Reached the Age of Majority and Is No Longer a Minor.

9. Isabella was born on April 16, 2002. A copy of Isabella's birth certificate from the Virginia Department of Health, Division of Vital Records, produced by Jenkins as JENKINS06436, is attached hereto as **EXHIBIT A** and incorporated herein.

10. Throughout the course of the original custody dispute proceedings, Jenkins consistently noted that Isabella was born on April 16, 2002. In her sworn testimony before the Virginia courts, Jenkins testified that Isabella's birthday was April 16, 2002. A copy of Jenkins Affidavit in the Circuit Court of Frederick County Virginia, produced by Jenkins as JENKINS04304-04306, is attached hereto as **EXHIBIT B** and incorporated herein. In that affidavit, Jenkins testified under oath that "[o]n April 16, 2002, our daughter, Isabella Miller-Jenkins was born in Hamilton, Virginia." (Exh. B, at ¶4).

11. Jenkins' counsel in the same proceeding in Virginia likewise testified under oath that Isabella was born on April 16, 2002. A copy of Jenkins' counsel's affidavit, produced by

Jenkins as JENKINS03926-03928, is attached hereto as **EXHIBIT C** and incorporated herein. In that affidavit, Jenkins' counsel states that "Isabella Miller-Jenkins was born on April 16, 2002 in Hamilton, Virginia." (Exh. C, at ¶7).

12. The Rutland County Family Court in Vermont, which exercised jurisdiction over the original custody dispute, likewise found in numerous orders that Isabella was born on April 16, 2002. A copy of the September 9, 2004 Rutland Family Court's order appointing a guardian ad litem, produced by Jenkins as JENKINS04595, is attached hereto as **EXHIBIT D** and incorporated herein. In that order, the court noted Isabella's date of birth as "4/16/02." (Exh. D, at 1). A copy of the June 17, 2004 Rutland Family Court's temporary custody order, produced by Jenkins as JENKINS04018-04020, is attached hereto as **EXHIBIT E** and incorporated herein. In that order, the Rutland Family Court again recognized Isabella's birthday as April 16, 2002. (Exh. E, at ¶1 ("The Plaintiff is awarded temporary legal and physical responsibility for the minor child of the parties, to wit: Isabella Ruth Miller-Jenkins, DOB 04/16/02.")). A copy of the November 24, 2003 Rutland Family Court's order, produced by Jenkins as JENKINS05331, requiring Jenkins to provide child support to Lisa Miller is attached hereto as **EXHIBIT F** and incorporated herein. In that order, the court again notes Isabella's birthday as April 16, 2002. (Exh. F, at 1). A copy of the Rutland Family Court's order holding Lisa Miller in contempt, entered September 2, 2004, and produced by Jenkins as JENKINS04374-04382, is attached hereto as **EXHIBIT G** and incorporated herein. The court's order notes in the "*Findings of Fact*" that "[t]he child, who will be referred to by initials only as IMJ, was born April 16, 2002." (Exh. G, at ¶7 (emphasis original)).

13. In the Virginia custody litigation, Defendant Lisa Miller likewise noted that Isabella's birthday is April 16, 2002. A copy of Lisa Miller's Petition to Establish Parentage and For Declaratory Relief in the Frederick County Circuit Court in Virginia, produced by Jenkins as

JENKINS03824-03827, is attached hereto as **EXHIBIT H** and incorporated herein. In her petition, Lisa Miller states that “Isabella was born in the Commonwealth of Virginia on April 16, 2002.” (Exh. H, at ¶7).

14. Thus, as Jenkins, Jenkins’ counsel, Defendant Lisa Miller, the Virginia Vital Records Division at the Virginia Department of Health, and the Rutland Family Court all have recognized, Isabella was born on April 16, 2002.

15. The age of majority in Vermont is eighteen. 1 Vt. Stat. Ann. §173 (“Persons of the age of 18 years shall be considered of age and until they attain that age, shall be minors.”).

16. On April 16, 2020, Isabella reached the statutory age of majority (eighteen) under Vermont law.

Respectfully submitted,

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*Attorneys for Defendants Liberty Counsel, Inc.
And Rena M. Lindevaldsen*

*Admitted pro hac vice

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of April, 2020, I caused a true and correct copy of the foregoing to be electronically filed with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic notice system.

/s/ Horatio G. Mihet

Horatio G. Mihet

VERIFY PRESENCE OF WATERMARK HOLD TO LIGHT TO VIEW

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH - DIVISION OF VITAL RECORDS

STATE FILE NUMBER: 145-02-028811

NAME OF REGISTRANT: ISABELLA RUTH MILLER-JENKINS

DATE OF BIRTH: APRIL 16, 2002 SEX: FEMALE

PLACE OF BIRTH: LOUDOUN COUNTY, VIRGINIA

MAIDEN NAME OF MOTHER: LISA ANN MILLER

AGE OF MOTHER: 33

MOTHER'S PLACE OF BIRTH: DISTRICT OF COLUMBIA

DATE RECORD FILED: MAY 7, 2002



This is to certify that this is a true and correct reproduction or abstract of the official record filed with the Virginia Department Of Health, Richmond, Virginia

DATE ISSUED **June 11, 2002**

Deborah Little-Bowser
Deborah Little-Bowser, State Registrar

Do not accept unless on security paper with seal of Vital Statistics clearly impressed. Section 32.1-272, Code of Virginia, as amended.

VS 15B

VOID WITHOUT WATERMARK OR IF ALTERED OR ERASED

EXHIBIT A

VIRGINIA:

IN THE CIRCUIT COURT OF FREDERICK COUNTY

<p>LISA MILLER-JENKINS,</p> <p>Petitioner,</p> <p>v. Chancery No. CH04-280</p> <p>JANET MILLER-JENKINS,</p> <p>Respondent.</p>

AFFIDAVIT OF JANET MILLER-JENKINS

BEFORE ME, the undersigned authority, on this day personally appeared Janet Miller-Jenkins, who, upon being sworn did depose and say:

1. From February 1998 to July 2002 I lived in Virginia with Petitioner Lisa Miller-Jenkins in an openly gay relationship. For the better part of this time Lisa and I lived together in my home at 313 West Virginia Avenue, Hamilton, Virginia.

2. On December 19, 2000, while still residing in Virginia, Lisa and I traveled to Vermont, entered into a civil union, and returned to Virginia.

3. After returning to Virginia, we decided to have a child through artificial insemination using sperm obtained from a sperm bank. Lisa and I selected a sperm donor with characteristics similar to mine so that our child would physically resemble both of us.

4. Lisa conceived and carried our daughter. On April 16, 2002, our daughter, Isabella Miller-Jenkins was born in Hamilton, Virginia. I was present in the delivery room for her birth and cut the umbilical cord.

5. After her birth, Isabella lived with Lisa and me at our family home in Virginia. I provided for Isabella and Lisa both financially and emotionally and loved and cared for Isabella as any mother would care for her daughter. Isabella refers to me as MaMa and to Lisa as Mommy.

6. In July 2002, concerned that Virginia was not a welcoming state for a gay family, Lisa and I decided to permanently relocate with Isabella, to Fairhaven, Vermont.

7. A little over a year later, in the Fall of 2003, Lisa and I decided we wished to end our romantic relationship and separate. I urged Lisa to remain in Vermont but, over my strenuous objections, Lisa insisted on taking Isabella and returning to Virginia, which she did in September 2003. Lisa did not contest my parental rights to Isabella at that time and was amenable to proceeding with dissolution of our civil union in Vermont and to asking the Court to determine custody and visitation.

JENKINS04304

EXHIBIT B

8. On November 24, 2003, Lisa filed to have our civil union dissolved in the Rutland County Family Court in Vermont ("the Vermont Court").

9. As part of the civil union dissolution, Lisa conceded that I had parental rights to Isabella and in light of that fact we agreed and Lisa asked the Vermont Court to determine custody of Isabella.

10. Isabella currently resides with Lisa in Frederick County, Virginia.

11. I continue to reside in Rutland County, Vermont.

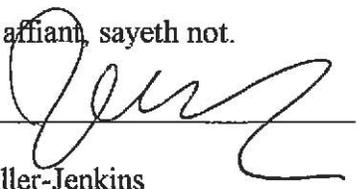
12. On June 17, 2004, the Vermont Court issued a Temporary Custody Order allocating parental rights and responsibilities between me and Lisa. Pursuant to that Order I was to have "parent-child" contact and visitation with Isabella in June and July in Virginia and in August and thereafter in Vermont.

13. Lisa refused to comply with the Vermont Court's custody and visitation Order and has refused to allow me to see or speak to Isabella since. When I have asked her why she is doing this, she has told me to "talk to her lawyers."

14. Because Lisa has repeatedly and continues to refuse my requests to see Isabella pursuant to the Vermont Court Order, I moved for contempt in the Vermont Court.

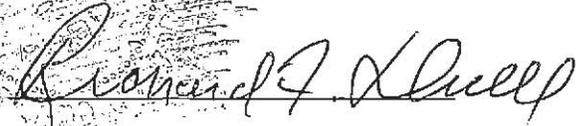
15. On July 19, 2004, the Vermont Court issued an Order stating that its Order is to be followed. The Court also stated that the Vermont Court "has and will continue to have jurisdiction over this case including all parent-child contact issues."

Further, affiant, sayeth not.



Janet Miller-Jenkins

SWORN TO AND SUBSCRIBED before me, Richard J. Ducey Notary Public in the State of Vermont, by Janet Miller-Jenkins this 18th day of August, 2004, to certify which witness my hand and seal of office.



Notary Public

UTDL 12180349

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My Commission Expires: 2-10-07

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7-16-04

VIRGINIA:

IN THE CIRCUIT COURT OF FREDERICK COUNTY

<p>LISA MILLER-JENKINS,</p> <p>Petitioner,</p> <p>v.</p> <p>JANET MILLER-JENKINS,</p> <p>Respondent.</p>

Chancery No. CH04-280

DECLARATION OF ALI M. ARAIN

Pursuant to Va. Code. Ann. § 20-146.20, I, Ali M. Arain, hereby state as follows:

1. I am a law clerk with the law firm of Arent Fox PLLC, 1050 Connecticut Avenue, N.W., Washington, D.C. 20036-5339, U.S.A. I am older than 18 years of age.
2. I have personal and direct knowledge of the facts and information set forth herein.
3. I submit this Declaration in support of Respondent's Demurrer and Motion for Costs, Fees and Expenses.
4. On July 22, 2004, I interviewed Janet Miller-Jenkins regarding this matter and obtained the information submitted herein.
5. In 2000, Petitioner Lisa Miller-Jenkins and Respondent Janet Miller-Jenkins resided in Virginia.
6. On December 19, 2000, though still residing in Virginia, Petitioner and Respondent traveled to Vermont and entered into a civil union. After returning to Virginia, Petitioner and Respondent decided to have a child, which they did through in vitro fertilization using sperm obtained from a sperm bank.

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EXHIBIT C

7. Isabella Miller-Jenkins was born on April 16, 2002 in Hamilton, VA. She lived at 313 W. Virginia Avenue, Hamilton, VA 20158 with Lisa Miller-Jenkins and Janet Miller-Jenkins until July 2002 when the family relocated to 17 Caernarvon Street, Fairhaven, VT 05743. She lived at this address with Lisa Miller-Jenkins and Janet Miller-Jenkins until September 2003 when Lisa Miller-Jenkins took Isabella, over Janet Miller-Jenkins' objections and returned to Virginia.

8. Isabella Miller-Jenkins currently resides at 101 Covington Lane, Winchester, VA 22601 with Lisa Miller-Jenkins.

9. Janet Miller-Jenkins continues to reside at 17 Caernarvon Street, Fairhaven, VT 05743.

10. Lisa Miller Jenkins initiated civil union dissolution proceedings in the Rutland County Family Court in Vermont on November 24, 2003 (Docket No. F454-11-03Rddm). Attached hereto at Exhibit A is a true and correct copy of the Summons, Complaint for Civil Union Dissolution, Notice of Appearance and Affidavit of Child Custody. Lisa Miller-Jenkins had expressly requested the Vermont Court to decide custody of Isabella as part and parcel of the dissolution process.

11. The Rutland County Family Court in Vermont issued a Temporary Custody Order on June 17, 2004, allocating parental rights and responsibilities between Lisa Miller-Jenkins and Janet Miller-Jenkins. Attached hereto at Exhibit B is a true and correct copy of the Temporary Custody Order re Parental Rights and Responsibilities.

12. Lisa Miller-Jenkins has violated the Temporary Custody Order by refusing Janet Miller-Jenkins telephone and mail contact with Isabella Miller-Jenkins. Lisa Miller-Jenkins also refused Janet Miller-Jenkins visitation with Isabella Miller-Jenkins from June 18, 2004 to

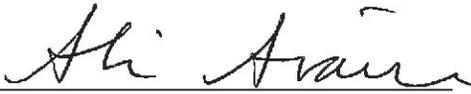
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present, in express violation of the Temporary Custody Order.

13. On July 19, 2004, the Rutland County Family Court in Vermont held Lisa Miller-Jenkins in contempt of Court for her refusal to comply with the terms of the Temporary Custody Order. Attached hereto at Exhibit C is a true and correct copy of the Order dated July 19, 2004.

14. Janet Miller-Jenkins knows of no other proceedings that could affect the current proceeding, including proceedings for enforcement of custody rights and proceedings relating to domestic violence, protective orders, termination of parental rights or adoption.

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury of the laws of the United States that the foregoing is true and correct.



Ali M. Arain

Executed on July 23, 2004

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STATE OF VERMONT
APPOINTMENT OF ATTORNEY FOR CHILD

Family Court of Vermont
Rutland County

IN THE MATTER OF : Lisa Miller-Jenkins vs. Janet Miller-Jenkins
Docket No. F454-11-03RcDmd

Name of Client:

Date of Birth:

Isabella Miller-Jenkins

4/16/02

Address of Client:

101 Covington Lane, Winchester, VA 22601

Whereas, it appears to this Court that the rights and interests of the aforesaid child may not be adequately represented in a pending proceeding before this Court:

NOW, THEREFORE, IT IS ORDERED that David Cleary, Esq., a reputable person and resident of the County of Rutland, State of Vermont, be and is hereby appointed Attorney for Child to represent the child in said proceeding.

Dated at Family Court, in the County of Rutland, this 9th day of September, 2004.



William D. Cohen
Family Court Judge



EXHIBIT D

STATE OF VERMONT
RUTLAND COUNTY, SS.

RUTLAND FAMILY COURT
DOCKET NO. F454-11-03Rddm

LISA MILLER-JENKINS,)
Plaintiff)
)
v.)
)
JANET MILLER-JENKINS,)
Defendant)

FILED
JUN 17 2004
RUTLAND FAMILY
COURT

TEMPORARY ORDER RE: PARENTAL RIGHTS & RESPONSIBILITIES

This matter came on for hearing before the Family Court on March 15, 2004, and again on May 26, 2004, the Honorable William D. Cohen presiding. The Plaintiff was present in Court and represented by her attorney, Judy G. Barone, and the Defendant was present in Court and represented by her attorney, Theodore A. Parisi, Jr. Based on the pleadings and papers on file in this matter, the representations of counsel and the evidence adduced at said hearing, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The Plaintiff is awarded temporary legal and physical responsibility for the minor child of the parties, to wit: Isabella Ruth Miller-Jenkins, DOB 04/16/02.
2. The Defendant is awarded, on a temporary basis, parent-child contact with the minor child as follows:
 - a) **JUNE 2004**: From 06/04/04 through 06/06/04, and again on 06/18/04 through 06/20/04. Both visitations shall occur in Virginia and the Defendant shall be responsible for transporting the child from the Plaintiff's residence to the situs of parent-child contact, and the Plaintiff shall be responsible for transporting the child at the end of parent-child contact period from the situs of Defendant's parent-child contact to

EXHIBIT E

VT Rec. 0014

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Plaintiff's residence.

- b) **JULY 2004:** From 07/25/04 through 07/31/04. Visitation shall occur in Virginia and the Defendant shall be responsible for transporting the child from the Plaintiff's residence to the situs of parent-child contact and the Plaintiff shall be responsible for transporting the child at the end of parent-child contact period from the situs of Defendant's parent-child contact to Plaintiff's residence.
- c) **AUGUST 2004 and THEREAFTER:** The Defendant shall have parent-child contact with Isabella in Vermont for the third full week of each month, beginning in August of 2004. Said visitation shall begin on a Saturday morning and end on Sunday evening. The Defendant shall be responsible for transporting the child from the Plaintiff's home in Winchester, Virginia, to her home in Fair Haven, Vermont, and the Plaintiff shall be responsible for transporting the child at the end of the parent-child contact period from Defendant's residence in Fair Haven, Vermont, to her residence in Winchester, Virginia.
- d) **OTHER TRANSPORTATION ARRANGEMENTS:** Other transportation arrangements may be made by the parties provided that each parent shall equally share the burden of such transportation. This Court has no preference for the mode of transportation and the parties may agree that travel by automobile, plane or train may be appropriate.

e) **TELEPHONE CONTACT:** The Plaintiff shall be permitted to have telephone contact with Isabella while she is with the Defendant once per day. The Plaintiff and Defendant will work out an appropriate time for such telephone contact having in mind Isabella's schedule. The Defendant shall have telephone contact with Isabella on a per-day basis when the child is with the Plaintiff. Similarly, the Plaintiff and Defendant shall work out a time when such contact shall take place and be appropriate considering Isabella's schedule.

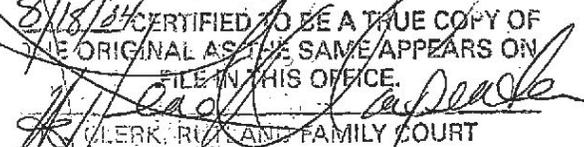
3. This Order shall remain in effect until superceded by another Order of this Court dealing with parental rights and responsibilities.

Dated at Rutland, Vermont, this 17 day of June, 2004.



Judge(s) - Rutland Family Court

a-m:millerjenkins.to


8/18/04 CERTIFIED TO BE A TRUE COPY OF
THE ORIGINAL AS THE SAME APPEARS ON
FILE IN THIS OFFICE.

CLERK, RUTLAND FAMILY COURT

LAW OFFICES
NICHOLAS A. PARISI, JR.
P.O. BOX 297
CASTLETON,
VERMONT 05735



VT Rec. 0016

CHILD SUPPORT ORDER

Vermont Family Court	County <i>Rutland</i>	Docket Number
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IN THE MATTER OF: **FILED** Plaintiff Lisa Miller-Jenkins
 NOV 24 2003 vs.
 RUTLAND FAMILY COURT Defendant Janet Miller-Jenkins

OBLIGOR (Person Who Must Pay Support)			OBLIGOR'S EMPLOYER		
Last Name <i>Miller-Jenkins</i>	First Name <i>Janet</i>	Initial <i>A</i>	Name <i>we Care Child Care</i>		
Street Address <i>17 Caernarvon St</i>			Street Address <i>17 Caernarvon St</i>		
City <i>Fair Haven</i>		State <i>VT</i>	City <i>Fair Haven</i>		State <i>VT</i>
Zip Code <i>05743</i>			Zip Code <i>05743</i>		
Telephone Number <i>802-265-4792</i>			Telephone Number <i>802-265-4792</i>		
Social Security Number [REDACTED]		Date of Birth <i>11-16-64</i>			

OBLIGEE (Person Who Receives Support)			OBLIGEE'S EMPLOYER		
Last Name <i>Miller-Jenkins</i>	First Name <i>Lisa</i>	Initial <i>A</i>	Name <i>Growing in Grace Childcare</i>		
Street Address <i>101 Cowington LN</i>			Street Address <i>101 Cowington LN</i>		
City <i>Winchester</i>		State <i>VA</i>	City <i>Winchester</i>		State <i>VA</i>
Zip Code <i>22601</i>			Zip Code <i>22601</i>		
Telephone Number <i>540-665-9529</i>			Telephone Number <i>540 665 9529</i>		
Social Security Number [REDACTED]		Date of Birth <i>09-06-68</i>			

CHILDREN WHO ARE SUBJECT TO THIS ORDER:						
Last Name	First Name	M.	Date of Birth	Grade	Social Security Number	
<i>Miller-Jenkins</i>	<i>Isabel</i>	<i>A</i>	<i>04-16-02</i>	<i>18 mo</i>	[REDACTED]	

Form 802 Rev. 1/02 SML

VT Rec. 0171

CERTIFIED TO BE A TRUE COPY OF
THE ORIGINAL AS THE SAME APPEARS ON
FILE IN THIS OFFICE

7. The child, who will be referred to by initials only as IMJ, was born April 16, 2002.
8. Janet was present during delivery and cut the umbilical cord.
9. Due to the perceived inhospitality by the Commonwealth of Virginia to a same-sex couple with a child, the parties made a joint decision to relocate to the State of Vermont because of Vermont's Civil Union law and its rights, privileges and responsibilities.
10. This relocation occurred during the summer of 2002 and the parties took up residence in the town of Fair Haven, Vermont.
11. During the fall of 2003, the parties decided to separate.
12. On November 24, 2003, Lisa filed a petition to dissolve the Civil Union with the State of Vermont Rutland County Family Court.
13. Paragraph numbered 4 of her Complaint noted IMJ as being the biological or adoptive child of the Civil Union.
14. Lisa requested the Vermont Family Court to award her custodial rights and to award Janet parent-child contact.
15. Lisa subsequently also requested a temporary order.
16. Though initially there was a question involving "parentage," at the March 15, 2004 hearing on the temporary order Lisa's attorney clearly indicated to the court that parentage was not an issue. (There is currently a motion by Lisa to set that waiver aside. This issue is under advisement and is awaiting briefing from both counsel.)

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17. The court proceeded with the hearing and issued a temporary order on parental rights and responsibilities June 17, 2004. Pursuant to this order, Janet was awarded time as a non-custodial parent with the child.
18. Effective July 1, 2004, the Commonwealth of Virginia enacted an amendment to its "Marriage Affirmation Act."
19. That Virginia law states, "Any such civil union, partnership contract or other arrangement entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created thereby shall be void and unenforceable."
20. On that same date, Lisa requested a Virginia court, specifically the Frederick County Circuit Court, to establish parentage of IMJ.
21. Unfortunately, and without contacting this court before it did so, the Virginia court modified the Vermont order to preclude parent-child contact between the child and Janet outside Virginia.
22. This court issued an entry order on July 19, 2004, in which it reaffirmed its jurisdiction in this matter and its temporary order of June 17.
23. Pursuant to the UCCJA, this court initiated contact with the Virginia court and had the requisite conference as to jurisdiction.
24. Janet remains a resident of the State of Vermont.

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25. Lisa has failed to comply with the court order on parent-child contact between the child and Janet.

Conclusions

A custodial parent who is able to comply with a court's order regarding visitation but refuses to do so may be held in contempt of court. 15 V.S.A. § 603; Matthews v. Riley, 162 Vt. 401, 413 (1994); Wells v. Wells, 150 Vt. 1, 6 (1988). See also In re Marriage of Kneitz, 793 N.E.2d 988 (Ill. Ct. App. 2003).

Here, Lisa has wilfully refused to comply with this court's order regarding visitation since mid-June, solely because she does not like it. She also disagrees with this court's decisions that she waived her right to challenge Janet's status as a parent, and that she has no viable legal challenge to Janet's status as a parent under Vermont law anyway. Lisa has filed a motion to reconsider or set aside these latter decisions, and that motion is currently under review. Nonetheless, the June 17, 2004 order is outstanding and in effect, and the pending motion for reconsideration does not relieve Lisa of her obligation to comply with it. Accordingly, Lisa has acted in contempt of this court.

Lisa's contemptuous conduct goes beyond that, however. Lisa initiated this dissolution action in Vermont and asked for a temporary order regarding parental rights and responsibilities. Then, when she received a temporary order she did not like, she not only refused to comply with it, but she actually initiated a separate action in a Virginia court, asking that court to disregard the fact that she had already initiated an

action involving the same issues (i.e., the parental status of Lisa and Janet and their relative rights and responsibilities) in Vermont.

Although not identical, the situation in Kneitz was similar to this one in some respects. 793 N.E.2d at 990-91. After unsuccessfully attempting to modify Father's visitation rights in Illinois, Mother went to a court in Louisiana and was successful in limiting Father's visitation. Then, in a civil contempt proceeding in Illinois, Mother tried to rely on the Louisiana order to excuse her noncompliance with the Illinois order. The Illinois court rejected this attempt, for two reasons. First, it held that the Louisiana order could not support an impossibility excuse (i.e., it could not excuse her failure to comply by making compliance with the Illinois order impossible without violating the law) because that order resulted from Mother's going to the Louisiana court after the Illinois court had already given her an answer she did not like. And second, the Illinois court held that the Louisiana order purporting to modify the Illinois order was invalid under the Uniform Child Custody Jurisdiction Act (UCCJA),¹ which provides that the first state to exercise jurisdiction has the exclusive right to proceed, and the federal Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A(f), which provides that one state cannot modify a parental rights and responsibilities order of another state unless the first state no longer has jurisdiction. 793 N.E.2d at 992-94.

In this case, of course, substantive differences between the laws of Vermont and Virginia would likely produce different results on the merits in the two states. But substantive differences in the law do not provide a basis for disregarding the existence

¹ The UCCJA has been adopted by Vermont, see 15 V.S.A. §§ 1031 et seq., and Virginia, see Va. Code Ann. §§ 20-146.1 et seq., as well as Illinois and Louisiana.

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of a previously filed action addressing the same parental rights and responsibilities issues between the same parties in another state. Under the UCCJA and the PKPA, once the jurisdiction of a court in one state is properly invoked in an action involving parental rights and responsibilities, a court in another state cannot exercise jurisdiction unless the first court no longer has jurisdiction or cedes it. See Kneitz, 793 N.E.2d at 993. *And there is no exception in the UCCJA or the PKPA for situations in which substantive state law differs, even in outcome determinative ways.* Indeed, it is in situations where differing outcomes are most likely that the concerns underlying the UCCJA and the PKPA – concerns about forum shopping and the chaos produced by conflicting outstanding orders – are most likely to arise.²

Lisa chose to bring her action initially in Vermont because of the rights and benefits Vermont's laws provide her. But when she realized that there were obligations and burdens to go along with those rights and benefits, and decided that under the specific order issued by the Vermont court the benefits were outweighed by the burdens, she changed her mind and decided to go elsewhere. As both federal and state legislatures have recognized, however, in this era of increased mobility and increased numbers of multi-jurisdictional parental disputes, the judicial system as a whole simply cannot allow parties to try to take advantage of legal and cultural differences which may make one state favor the position of a particular party over another.

² There is a big difference, of course, between declining to recognize or enforce rights arising from a civil union, as Virginia's new law mandates, and disregarding the existence of prior pending litigation in another state (and thus exercising jurisdiction despite the provisions of the UCCJA and PKPA forbidding it) because that state does recognize and enforce rights arising from a civil union.

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It follows that this court finds Lisa's behavior clearly contemptuous and holds her in contempt of this court's June 17, 2004 order, which was reaffirmed in its July 19, 2004 entry order.

With the child's best interests in mind, however, the court exercises its discretion to refrain from imposing any sanction for the contempt at this time. The goal is to ensure future compliance with the June 17 order, and the court is hopeful that the clarification of this court's position and expectations will do this.³ This court cannot control what the Virginia court will do. However, it is this court's expectation that regardless of what the Virginia court does, Lisa must and will comply with this court's June 17 order until this chaotic situation, created by her own conduct in bringing these two actions, is resolved.⁴ If Lisa's refusal to comply continues despite this clarification, the court will then schedule a hearing to revisit the question of sanctions.

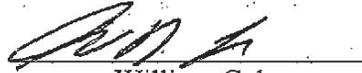
³ The court acknowledges that in Thompson v. Thompson, 171 Vt. 549, 550 (2000), the Vermont Supreme Court reversed a trial court's decision not to impose sanctions for contempt in a child visitation context. In that case, however, the decision not to impose sanctions was coupled with the likelihood that the case would be moved to New York, so the decision not to impose sanctions for past non-compliance totally undermined the coercive effect of the civil contempt ruling. Here, on the other hand, the court's decision not to impose sanctions at this time is coupled with the clear prospect of sanctions for any continuation of the contemptuous behavior, and the court believes this will achieve the civil contempt's coercive purpose.

⁴ Of course, this chaos typifies just the type of situation the UCCJA and PKPA were meant to prevent.

ORDER

Janet's motion for contempt is **GRANTED**, but the question of sanctions will be reserved and no sanctions will be imposed if Lisa now complies with the court's June 17 order in light of the clarification provided herein.

Dated at Rutland, Vermont, this 2nd day of Sept, 2004.



William Cohen
Presiding Judge

(As to the Facts)



Jeanne H. Collette
Assistant Judge

⁸
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CERTIFICATE OF SERVICE

I, Joseph R. Price, hereby certify that on this 24th day of September 2004, a copy of *Respondent's Supplemental Submission of Certified Record of Rutland Family Court of Vermont Proceedings in Miller-Jenkins v. Miller-Jenkins*, was served by first-class mail, upon:

Phillip S. Griffin, II, Esq.
Peter Thos. Hansen, Esq.
Phillip S. Griffin, II, PC
102 South Kent Street
Winchester, VA 22601
540-667-4711 (facsimile)


Joseph R. Price

Exhibit B

VIRGINIA: IN THE FREDERICK COUNTY CIRCUIT COURT

LISA MILLER-JENKINS,
Petitioner,

VS.

IN CHANCERY NUMBER: CH04- 280

JANET MILLER-JENKINS,
17 Carnarvon Street
Fairhaven, VT 05743,
Respondent.PETITION TO ESTABLISH PARENTAGE AND FOR DECLARATORY RELIEF

COMES NOW the Petitioner, Lisa Miller-Jenkins ("Petitioner"), by counsel, and for her
Petition to Establish Parentage and for Declaratory Relief, respectfully states as follows:

FACTS COMMON TO ALL COURTS

1. Jurisdiction is required in this Court pursuant to VA Code §20-49.2.
2. Venue is proper in this Court pursuant to VA Code §8.01-261(i)(a)(1).
3. Petitioner, a resident of Frederick County, Virginia, is the biological mother of a minor child named Isabella Miller-Jenkins ("Isabella").
4. Petitioner is the parent of Isabella under VA Code §20-49.1.
5. Petitioner has sole custody of Isabella, who resides with her mother in Frederick County, Virginia.
6. Isabella was conceived in Virginia through assisted and in-vitro conception as defined by VA Code §20-156.
7. Isabella was born in the Commonwealth of Virginia on April 16, 2002.
8. Petitioner is the parent of Isabella pursuant to VA Code §20-158(A)(1).
9. A Virginia birth certificate was issued for Isabella.
10. Pursuant to VA Code §20-158(A)(3), there is no father of Isabella.
11. Respondent, Janet Miller-Jenkins, and Petitioner entered into a civil union in the

EXHIBIT H

VT Rec. 0157

state of Vermont on December 19, 2000, which is in the process of judicial dissolution (Rutland County Family Court, Docket Number 454-11-03 Rddm, Vermont).

12. Respondent has claimed parentage by virtue of the civil union, and seeks to deny, infringe, and/or restrict Petitioner's parental rights, through, *inter alia*, the aforementioned judicial proceedings.
13. The civil union is void in this Commonwealth.
14. No rights arising or claiming to arise out of the civil union can be recognized or have any force or effect in this Commonwealth.

COUNT I-DETERMINATION OF PARENTHOOD

15. The foregoing allegations are incorporated by reference as if set forth fully herein.
16. Petitioner is entitled to have the parentage of Isabella adjudicated by this Court.

COUNT II- DECLARATORY RELIEF

17. The foregoing allegations are incorporated by reference as if set forth fully herein.
18. An actual controversy exists between the parties regarding the parentage of Isabella.
19. Petitioner is entitled to rely on her parentage established and confirmed under the laws of this Commonwealth.
20. Petitioner's rights as a parent are capable of declaration by this Court.

WHEREFORE, for the foregoing reasons, Petitioner respectfully requests the

Chancellor of this Honorable Court to enter a decree granting the following relief:

1. Declaring Petitioner, Lisa Miller-Jenkins, to be the sole parent of Isabella Miller-Jenkins.
2. Adjudicating Petitioner, Lisa-Miller Jenkins, to be the sole parent of and to have sole parental rights over Isabella Miller-Jenkins.
3. Adjudicating any parental rights claimed by Respondent, Janet Miller-Jenkins, to be nugatory, void, illegal and/or unenforceable.
4. Award Petitioner her costs and attorney's fees expended herein, together with all

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such further relief as this Court shall deem meet and just and as equity may require.

Respectfully submitted,

LISA MILLER-JENKINS

By: *Peter Thos. Hansen*
Counsel

Phillip S. Griffin, II, Esquire (VSB# 34576)
Peter Thos. Hansen, Esquire (VSB# 34819)
Phillip S. Griffin, II, P.C.
102 South Kent Street
Winchester, VA 22601
(540) 667-4647
(540) 667-4711 (FAX)

4/18/20
CERTIFIED TO BE A TRUE COPY OF
THE ORIGINAL AS THE SAME APPEARS ON
FILE IN THIS OFFICE.
[Signature]
CLERK, RUTLAND FAMILY COURT

VIRGINIA: IN THE FREDERICK COUNTY CIRCUIT COURT

VT Rec. 0159

LISA MILLER-JENKINS,
Petitioner,

VS.

IN CHANCERY NUMBER: CH04- 280

JANET MILLER-JENKINS,

RDM : WE

FAX NO. : 5403384214

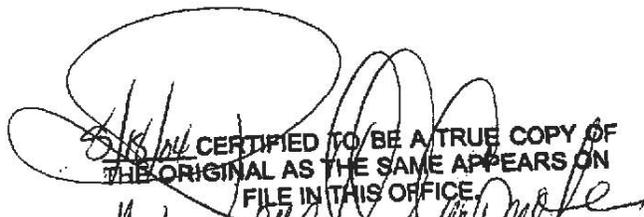
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Certificate of Service

The undersigned does hereby certify that on this ___ day of July 2004, the foregoing Notice of Hearing was mailed by United States Postal Service, first-class, postage prepaid to:

Janet Miller-Jenkins
17 Carnarvon Street
Fairhaven, VT 05743


Peter Thos. Hansen


CERTIFIED TO BE A TRUE COPY OF
THE ORIGINAL AS THE SAME APPEARS ON
FILE IN THIS OFFICE.

CLERK, RUTLAND FAMILY COURT

VT Rec. 0160

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

<hr/>)	
JANET JENKINS, ET AL.,))	
))	
Plaintiffs,))	
))	
v.))	Docket No. 2:12-CV-00184
))	
KENNETH L. MILLER, ET AL.))	
))	
Defendants.))	
<hr/>)	

INDEX OF EXHIBITS FOR DEFENDANTS LIBERTY COUNSEL, INC. AND RENA LINDEVALDSEN'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY AS TO ALL CLAIMS PLAINTIFF JANET JENKINS PURPORTS TO BRING AS NEXT FRIEND OF ISABELLA MILLER

EXHIBIT

DESCRIPTION

- | | |
|---|--|
| A | Birth Certificate for Isabella Miller issued by the Department of Health, Division of Vital Records of the Commonwealth of Virginia. |
| B | Affidavit of Plaintiff Janet Jenkins filed in the Circuit Court of Frederick County, Virginia. |
| C | Affidavit of Plaintiff Janet Jenkins' counsel, Ali M. Martin, filed in the Circuit Court of Frederick County, Virginia. |
| D | Order Appointing Guardian ad Litem entered by the Rutland County, Vermont Family Court. |
| E | Temporary Custody Order entered by the Rutland County, Vermont Family Court |
| F | Child Support Order entered by the Rutland County, Vermont Family Court |
| G | Order of Contempt entered by the Rutland County, Vermont Family Court |
| H | Petition to Establish Parentage, filed by Defendant Lisa Miller in the Circuit Court of Frederick County, Virginia |