

Colorado Court of Appeals 101 W. Colfax Ave. Suite 800 Denver, CO 80202 <hr/> Trial Court Case Number: Larimer County 11DR444 <hr/> IN RE THE MARRIAGE OF: PAPPENHEIM  Appellee <b>Jeffrey R. Pappenheim</b>  v.  Appellant: <b>Stacy Lynne</b>	<p style="text-align: center;">▲      <b>COURT USE ONLY</b>      ▲</p>
Douglas Romero, #35464 Traci Christy, #43756 200 S. Sheridan Blvd., Suite 150 Denver, CO 80226 Phone Number: 303-934-7500 Fax Number: 303-934-7500 E-Mail: dougromero@coloradochristiandefensecounsel.com E-Mail: tracichristy@coloradochristiandefensecounsel.com	Court of Appeals Case Number: <b>12CA764</b>
<b>PETITION FOR STAY OF JUDGMENT PENDING APPEAL</b>	

Pursuant to C. R. Civ. P. 8 and pending review by this Court, Appellant-Respondent (“Ms. Lynne”), Stacy Lynne, respectfully petitions this Court to stay enforcement of the judgment of the Honorable Julie Kunce Field, Judge Presiding, Larimer County District Court, dated December 19, 2011. Ms. Lynne seeks a stay pending review of this Court of the trial court’s Permanent Orders granting judgment in favor of the Appellee-Plaintiff (“Mr. Pappenheim”).

## **FACTS**

Ms. Lynne and Mr. Pappenheim have a son, minor child Jaden Pappenheim, date of birth April 11, 2003 who is currently nine (9) years of age. From 2003 until 2011 the minor child never spent a night alone with Mr. Pappenheim, who struggled with being a parent and abandoned Ms. Lynne and the minor child multiple times due to not being able to handle the pressure of being a father. Ms. Lynne raised the minor child on her own for the first eight years of the minor child's life, with little to no presence of Mr. Pappenheim. The pressure upon Mr. Pappenheim to be a father caused him to be unable to control his emotions, anger and obsessive behavior, which was a factor in him leaving behind Ms. Lynne and the minor child. The above-mentioned behavior caused Ms. Lynne to fear for her and the minor child's safety indefinitely. Upon Mr. Pappenheim's return to Colorado in December 2010, he attempted to be in minor child's life. Ms. Lynne met with Mr. Pappenheim on multiple occasions to allow Mr. Pappenheim to visit the minor child. However, Mr. Pappenheim always ended each visit with angry and violent outbursts that caused Ms. Lynne to fear for her and the minor child's safety. Ms. Lynne, fearing for her and the minor child's safety, then attempted multiple times to prevent Mr. Pappenheim from harming her and the minor child through the use of temporary restraining orders. Mr. Pappenheim thereby filed a parental responsibilities action, incorrectly labeled "in re the marriage of" since the

parties have never been married, and alleged that Ms. Lynne was alienating him from the minor child, when in reality his inability to control his anger prevented him from seeing the minor child.

Ms. Lynne is known throughout Larimer County for fighting for the rights of small businesses and preventing many large and politically connected businesses from gaining a monopoly on city services, which has gained her a reputation within and around Larimer County and its Justice Center. This reputation is suspected to have played a role in creating prejudice against Ms. Lynne within Larimer County. When Ms. Lynne appeared to her first temporary restraining order hearing, the magistrate involved disregarded her evidence of domestic violence perpetrated by Mr. Pappenheim and denied the permanent restraining order. Every other temporary restraining order hearing thereafter based their denial of a permanent restraining order against Mr. Pappenheim on the findings from the first restraining order hearing, whereby the evidence was never considered. Thus, Ms. Lynne failed to receive protection from a permanent restraining order due to the discretion of one magistrate that refused to consider her evidence.

In the subsequent Permanent Orders hearing for the parental responsibilities of the minor child, Jaden Pappenheim, these permanent restraining order hearings were considered as evidence against Ms. Lynne by Judge Field and were construed as evidence of Ms. Lynne alienating the minor child from his father. Protection

Order hearings are meant to provide protection to victims of domestic violence and it is against public policy to discourage the use of Protection Orders for fear they will be used as evidence against the victim in allocation of parenting time. Thus, Judge Field in the Larimer County District Court, despite the ample evidence of Mr. Pappenheim's inability to control his rage and obsessive, stalker-like behavior, ordered for the minor child to be placed into Mr. Pappenheim's full custody. Further, without justification for parental restrictions Judge Field restricted Ms. Lynne's parenting time to twice per week, supervised. A graduated parenting time was implemented beginning with six (6) consecutive weeks of two supervised parenting visits for two hours each per week, where upon Ms. Lynne would graduate to one unsupervised visit every Saturday for six (6) consecutive weeks, where upon Ms. Lynne would graduate to every other weekend parenting time from Friday evening to Sunday evening until June 2012, when Ms. Lynne would then get the first week of each month of parenting time until she graduated to 50-50 parenting time by the fall of 2012.

Due to this Permanent Order by the Court, the minor child has been stripped from the family, friends, and stable environment he has grown up in for the first eight (8) years of his life. Mr. Pappenheim has most recently been cancelling Ms. Lynne's scheduled parenting time with minor child as a punitive reaction to the recent filing of the Notice of Appeal and Application for Stay. Furthermore, Mr.

Pappenheim has refused to allow the minor child to spend any time with his friends, orders minor child to ignore his friends and since then has forced the minor child to change schools. Furthermore, Mr. Pappenheim has been coaching the minor child to harass his mother, Ms. Lynne, over the telephone, whereby he is forced to tell his mother he does not want to see her anymore. Yet, when minor child is with Ms. Lynne during her parenting time he begs her to allow him to stay with her. When Ms. Lynne requests reasons why the minor child says mean things to her, the minor child becomes silent and attempts to tell his mother to not make this any more complicated than it needs to be.

Furthermore, the minor child has shown signs of his physical and mental health deteriorating. The minor child draws sad and angry pictures, whereas he previously only drew happy and optimistic pictures. He has lost weight and shows sign of stress in his face, with dark circles around his eyes. The minor child has also reported being allowed to drive a truck, on his own, to go into town to buy him food because he gets hungry, which shows food is not being kept regularly for the minor child to eat at Mr. Pappenheim's residence. These are all signs that Mr. Pappenheim, who has never spent even one night alone with the minor child as a parent, does not know how to properly raise a healthy child.

### **REASONS FOR STAY PURSUANT TO C.A.R. 8**

#### **I. Trial Court Denied Application for Stay**

According to the Order issued by Larimer County District Court Judge Field on May 14, 2012 the stay was denied because “the request is not in the child’s best interest.” No further explanation was provided.

II. A Stay is Necessary to Avoid Irreparable Harm to Minor Child

This stay is necessary to avoid irreparable harm to the minor child because Mr. Pappenheim has been cancelling visitations for the minor child to see his mother, Ms. Lynne, has turned off the minor child’s phone so Ms. Lynne cannot leave messages for minor child, and has refused to allow the minor child to call his mother, Ms. Lynne.

Furthermore, Mr. Pappenheim has anger management problems that the minor child has begun to imitate and has shown to Ms. Lynne during their previous parenting time visits.

Moreover, Mr. Pappenheim has been known to allow minor child, who is currently 9 years old, to drive himself into town to buy food because Mr. Pappenheim has not provided the minor child food at the home.

Mr. Pappenheim’s seclusion of the minor child from Ms. Lynne is harmful to the child for the very reason the Larimer County District Court ruled for custody to be transferred from Ms. Lynne: so the child will not be secluded from either parent. Moreover, the minor child is not only being prevented from seeing his mother but he is being subjected to verbal abuse about his mother by

Mr. Pappenheim and is victim to Mr. Pappenheim's angry and violent outbursts.

It is in the minor child's best interests to be returned to Ms. Lynne's care until the appellate review of this case is finally determined.

III. Ms. Lynne is likely to Succeed on the Merits

A. Ms. Lynne is likely to succeed on the merits due to the fact that the Larimer County District Court Judge Julie Field disregarded any and all evidence of Mr. Pappenheim's domestic violence and abuse and awarded immediate and full custody of minor child to Mr. Pappenheim without even ordering an assessment of Mr. Pappenheim's anger management issue or parenting abilities. Mr. Pappenheim had never cared for any child, nor had he ever spent a night alone with the minor child, which should have been heavy factors weighed against immediate transfer of full custody to Mr. Pappenheim and restricted visitation to Ms. Lynne.

Ms. Lynne is also likely to succeed for the reasons set forth below:

- i. Abuse of discretion by the Trial Court in issuing the Permanent Orders due to the Court's lack of enough evidence to provide a fair and reasonable order, which is manifestly arbitrary, unreasonable or unfair.

- ii. Abuse of discretion by the Trial Court in allowing witnesses that were denied for Ms. Lynne to be called by Mr. Pappenheim.
- iii. Abuse of discretion and error in law by disregarding C. R. Civ. P. 16.2(g)(7) in giving presumptive weight to the Child and Family Investigator's (CFI) report while deciding Permanent Orders when such report was disputed by Ms. Lynne. According to C. R. Civ. P. 16.2(g)(7) "[t]he Court shall not give presumptive weight to the report of a court appointed or jointly selected expert when such report is disputed by one or both parties." The trial court issued the exact recommendation of the CFI in its Permanent Orders.
- iv. Abuse of discretion by the Trial Court in denying Ms. Lynne's request to continue trial due to Petitioner providing 712 pages of Exhibits to Ms. Lynne three days before trial, in violation of C. R. Civ. P. 16(f).
- v. The Trial Court wrongly relied on misstatements of fact presented to the Court by Mr. Pappenheim and Mr. Pappenheim's counsel, prejudicing the findings of fact by the Trial Court in deciding Permanent Orders. Specifically, Mr. Pappenheim's Counsel claimed Ms. Lynne had an escape plan for herself and the minor child, and provided zero evidence to prove this claim; yet, the Trial



Court references this as a fact that was heavily relied upon in the Permanent Orders when choosing to give full custody to Mr. Pappenheim. Further, Mr. Pappenheim's Counsel claimed Ms. Lynne had alienated the child from his father, Mr. Pappenheim, which the Trial Court also cited as a fact it relied upon in its Permanent Orders; however, Ms. Lynne encouraged Mr. Pappenheim's time with the minor child for the previous eight years until Mr. Pappenheim abandoned Ms. Lynne and minor child, and had only recently been prevented from seeing minor child due to his escalated domestic abuse against Ms. Lynne and minor child. Furthermore, Mr. Pappenheim had every right and ability to spend time with the child at his school, where the Principal of said school testified on record in the Permanent Orders hearing that Mr. Pappenheim was welcome to visit his son at the school anytime, but Mr. Pappenheim never exercised this right and decided to blame Ms. Lynne, which the Court decided to wrongfully believe. Lastly, Mr. Pappenheim and his Counsel claimed the minor child's health had deteriorated due to Ms. Lynne's telling him about the Permanent Orders hearing; however, Ms. Lynne has raised minor child from his birth with minor child

never having spent a night alone with Mr. Pappenheim. Minor child was exceptionally healthy up until Mr. Pappenheim's lawsuit threatened to steal him away from his mother, which is Mr. Pappenheim's attempt to exert more control over Ms. Lynne and further destruct her and the minor child's life, which is indicative of his obsessive, threatening and unstable behavior. Thus, any deterioration in the minor child's health at that point was in fact due to Mr. Pappenheim.

- vi. Abuse of discretion when Trial Court ordered Ms. Lynne pay \$1,300.00 in Child and Family Investigator fees.
- vii. Abuse of discretion and error in law when Trial Court ordered Ms. Lynne pay Petitioner \$13,835.97 in attorney's fees despite Petitioner's repeated failure to file his Sworn Financial Statement as ordered by the District Court and despite Respondent's lack of income.

### **MOTION FOR STAY**

Ms. Lynne respectfully applies to this Court for an order staying the enforcement of the December 21, 2012 Permanent Orders, such order to be in effect until determination by this Court on appeal. In support of this application for

a stay, Ms. Lynne references the above arguments showing that harm will be done to the minor child and Ms. Lynne.

### **ATTACHMENTS**

Attached to this petition for consideration by this Court are copies of the order sought to be stayed, motion for post-judgment relief pursuant to Colo.R.Civ.P. 62, Order denying Expedited Briefing Schedule, motion for post-judgment relief pursuant to Colo.R.Civ.P. 59 and its exhibits, Answer to Rule 59 Motion, Reply to Rule 59 Motion and its exhibits, Orders denying Post-Judgment Relief, Respondent's Motion for Stay, Order denying the Stay, Order denying Stay, Order regarding Attorney's Fees, and Notice of Appeal. Furthermore, an affidavit by Ms. Lynne has been attached for consideration by this Court.

WHEREFORE, Ms. Lynne respectfully prays this Court issue a stay of the enforcement of the trial court's Permanent Orders from December 21, 2011 and Order on Attorney's Fees pending this Court's ruling on Appeal and that Ms. Lynne have such other relief as the Court may deem proper.

Respectfully submitted on this 15<sup>th</sup> day of May, 2012,

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**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on this 19th day of May, 2012, a true and correct copy of the foregoing, *PETITION FOR WRIT OF SUPERSEDEAS AND MOTION FOR STAY* was served upon the parties by placing said copies via LexisNexis File & Serve, via facsimile transmission or by being placed in the United States mail, postage prepaid, as indicated and addressed as follows:

Clerk of the Court of Appeals  
*Only*

*Via LexisNexis File & Serve*

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*Via Electronic Mail*

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