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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

IN RE: THE MATTER OF

LARRY BIRKHEAD, Petitioner,

AND

VICKIE LYNN MARSHALL, Respondent.

FAMILY DIVISION CASE NO. 07-1909 (41)

ORDER ON PETITIONER'S PETITION TO DOMESTICATE AND MOTION FOR ENFORCEMENT

THIS CAUSE came before the Court upon the Petitioner's Petition to Domesticate and/or Establish a Foreign Order in Paternity Case Dated February 20 2007 and Motion for Enforcement. The Court having reviewed the file, heard legal arguments on the issues, reviewed applicable case law and statutes, communicated with the Honorable Robert A. Schnider from the Superior Court of California, County of Los Angeles and being otherwise duly apprised,

The Court FINDS as follows:

- 1. The Petitioner, Larry Birkhead, (hereinafter "the Petitioner"), is correct in his assertion that the Uniform Child Custody Jurisdiction and Enforcement Act (hereinafter referred to as UCCJEA) applies to paternity cases; however, the UCCJEA applies only to the issue of custody. Therefore, the UCCJEA is only applicable to those paternity cases where the custody of the minor child is at issue before the court. Sanchez v. Fernandez, 915 So.2d 192, 193 (Fla. 4th DCA 2005); see also Yan v. Fleming, 595 So.2d 573 (Fla. 4th DCA 1992).


2. In his order dated February 20, 2007, the Honorable Robert A. Schirrer declined, for the second time, to exercise jurisdiction over the minor child, Dannielynn Hope Marshall Stern (hereinafter "the minor child"), finding that California is not the minor child's home state.
3. The California Court has been very clear that the sole issue before it is the determination of paternity and not the custody of the minor child. Therefore, the UCCJEA does not apply to this particular paternity action.
4. The California Court cannot confer a greater jurisdiction to the Florida Court than the one that it holds. This Court stands in the same position as the California Court and is hence equally unable to exercise jurisdiction over the minor child.
5. The California and Florida courts agree that with regards to custody, the Bahamas is the proper venue. In fact, the Bahamian Court has already exercised its jurisdiction over the minor child.
6. Florida Courts have jurisdiction to enter orders that affect government entities within its state. This Court's involvement in this case is as an extension of the California Courts. This Court will continue to assist the California Courts to enforce orders rendered as they relate to subject matter and persons within Florida's jurisdiction.
7. Based on the foregoing, this Court does not have jurisdiction to send an official to the Bahamas to harvest the minor child's DNA. Even if the Florida Court had jurisdiction to take such action, it would only be able to enter such order upon request from the California Court. The Court finds that this was the Petitioner's request and not the Court's. There was nothing in the California Court's Order from February 20, 2007 requesting this Court to take such action. In fact, during this Court's conversation

with the California Court, the Honorable Robert A. Schnider opined that it would be premature to contact the Bahamian authorities.

It is therefore, ORDERED AND ADJUDGED as follows:

1. In accordance with the Order signed by the Honorable Robert A. Schnider's on February 20, 2007, and his verbal confirmation of said request, this Court hereby orders the Broward County Medical Examiner to release the deceased Respondent's DNA samples to the Petitioner's expert, Michael L. Baird, Ph.D.
2. The Petitioner's request for the harvesting of the minor child's DNA is hereby DENIED.

DONE AND ORDERED in Chambers at Fort Lauderdale, Florida, Broward County, this, 28 day of February, 2007.



LAWRENCE L. KORDA  
CIRCUIT COURT JUDGE

Copies furnished to:

Susan Brown, Esq., Counsel for Petitioner  
Nancy A. Hass, Esq., Counsel for Petitioner  
M. Krista Barth, Esq., Counsel for Howard K. Stern  
Richard C. Milstein, Esq., Guardian Ad Litem  
Christopher S. Carver, Esq., Counsel for Guardian Ad Litem  
Stephen Tunstall, Esq., Counsel for Virgie Arthur