IN THE UTAH COURT OF APPEALS

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Oksana Pearce fka Oksana Zapassoff, Petitioner and Appellee, v. Loren E. Pearce, Respondent and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20061077-CA F I L E D (December 20, 2007) 2007 UT App 397

Second District, Ogden Department, 034900448
The Honorable Pamela G. Heffernan

Attorneys: Loren E. Pearce, Lindon, Appellant Pro Se
Terry R. Spencer, Sandy, for Appellee

Before Judges Bench, Greenwood, and Davis.

GREENWOOD, Associate Presiding Judge:

Loren E. Pearce (Father) appeals from a decree of divorce awarding sole physical and legal custody of the parties' minor child to Oksana Zapassoff, formerly Oksana Pearce (Mother).[1] "A trial judge's award of custody . . . is . . . reviewed for abuse of discretion." Sigg v. Sigg, 905 P.2d 908, 912 (Utah Ct. App. 1995). We affirm.

Despite serious deficiencies in Father's briefing, we address his arguments. See Lundahl v. Quinn, 2003 UT 11, ¶ 4, 67 P.3d 1000 (stating that Utah's appellate courts are "generally lenient with pro se litigants"). Father first contends that the

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[1]Father directs his arguments on appeal almost entirely to the issue of custody. Therefore we presume that he is appealing only the custody award, despite a closing sentence in his opening brief that states that he is appealing the entire judgment. Furthermore, Father's failure to analyze any other issues precludes us from considering them. See Utah R. App. P. 24(a)(9).

trial court abused its discretion in admitting exhibits in violation of rules 26(a)(4) and 37(f) of the Utah Rules of Civil Procedure. See Utah R. Civ. P. 26(a)(4), (37)(f). Father, however, waived any right to object to Mother's exhibits when he stipulated, in response to direct questions from the trial court, to the introduction of Mother's exhibits.

Father also argues that the trial court violated rule 610 of the Utah Rules of Evidence by allowing testimony and the admission of a letter that referred to Father and Mother's "sacred religious experiences together." See Utah R. Evid. 610. Father claims this evidence was designed to "denigrate and embarrass" him. Father, however, does not identify any evidence indicating that the admission of the letter influenced the trial court's decision regarding custody in any way. In fact, Father admits that the trial court does not refer to the letter or Father's religious experiences in its findings. We are therefore not persuaded that the admitted evidence prejudiced Father or violated rule 610 of the Utah Rules of Evidence.

In addition, Father claims that the evidence submitted to the trial court does not support the trial court's findings. Much of Father's argument is based on his belief that the trial court's award of full custody to Mother revolved around the trial court's improper reliance on false allegations of abuse. However, the evidence does not support this claim. Far from relying on the abuse allegations, the trial court stated that it was not able to reach a definitive conclusion regarding the allegations. In its decision, the trial court stated:

> While there is no firm evidence that these episodes of abuse occurred, there is a distinct possibility that they may have occurred particularly since they are referred to in the divorce decree from respondent's first marriage. . . . The court is not able to determine whether the allegations of violence and abuse are accurate given the state of the evidence. . . . At best the evidence on this issue is evenly weighed thereby making a conclusive determination impossible.

Furthermore, the trial court based its decision to reject joint custody on the parties' inability to cooperate, which the evidence amply supported, not on the abuse allegations. The trial court also noted that because Mother and Father lived in different counties joint custody would not be feasible for a child attending elementary school.

Father also claims that the trial court made "contradictory" and "improper" statements that were prejudicial to him. The comments to which Father refers demonstrate that the trial court was attempting to help Father with basic trial procedure.

Finally, Father challenges the trial court's custody award under both the Utah and the United States constitutions. Father asserts "that any legislative scheme or color of law that would deny a parent equal access to his/her child is blatantly unconstitutional." Father claims that "[a]bsent a showing of substantial harm . . . the only shared parenting arrangement that is constitutionally compliant is a presumption of equal and joint physical and legal custody." Despite Father's claim, the statute in question, section 30-3-10 of the Utah Code, authorizes trial courts to make custody determinations pursuant to the best interests of the child standard, not according to an "absence of substantial harm" standard. Utah Code section 30-3-10(5) states:

> This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.

Utah Code Ann. § 30-3-10(5)(2007).

In Palmore v. Sidoti, 466 U.S. 429 (1984), the United States Supreme Court recognized that state statutes awarding custody based on the best interests of the child are "indisputably a substantial governmental interest for purposes of the Equal Protection Clause." Id. at 433. Father provides no case law that counters this holding. Therefore, we do not further address Father's constitutionality arguments.

As a final matter, Mother requests her attorney fees incurred on appeal. We deny this request because the trial court did not award Mother attorney fees at trial and Mother did not comply with rule 24 of the Utah Rules of Appellate Procedure. See Utah R. App. P. 24(a)(9). This rule requires that a "party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award." Id. Mother has not stated the legal basis for her request for attorney fees, other than "as a sanction against Father" because he failed to properly brief his appeal.

We believe that this statement is insufficient under rule 24(a)(9), and do not award attorney fees to Mother.

Affirmed.

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Pamela T. Greenwood,
Associate Presiding Judge

WE CONCUR:

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Russell W. Bench,
Presiding Judge

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James Z. Davis, Judge