

# **FACSIMILE**

Date: December 29<sup>th</sup>, 2008

6 (six) pages with cover sheet

## **Expedited Judicial Process** **Judicial Priority**

RE: Case No. 96-D-217

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TO:  
Clerk of the District Court- *please file record Case No. 96-D-217*  
Facsimile: (785) 291-4908

and to:  
Chief Judge Nancy Parrish Div. XIV  
Facsimile: (785) 291- 4917

and to:  
Judge David Debenham Div. XIII  
Facsimile: (785) 291-4917

IN THE DISTRICT COURT  
THIRD JUDICIAL DISTRICT, SHAWNEE COUNTY, KANSAS  
DIVISION THIRTEEN

IN THE MATTER OF  
HALLECK G. RICHARDSON,  
AND;

Case No. 96D-217

CLAUDINE DOMBROWSKI

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Pursuant to K.S.A. CHAPTER 60

**Expedited Judicial Process (DCR 3.401)**

**60-1501. Jurisdiction and right to writ; time limitations**

COMES NOW, Claudine Dombrowski (respondent), and respectfully moves this Court and the Chief Judge Pursuant to K.S.A. 20-164, Kansas Supreme Court Rule 172 entitled Expedited Judicial Process. (DCR 3.401)

IN SUPPORT of this Motion, Respondent states and alleges as follows: This Court has a multitude of motions that have not been heard and or ignored, It has been over five years of constant requests, filings, affidavits and a plethora of other records, reports and evidence, that this case demands the immediate attention and restoration of due process, finding of any fact and immediate restoration of child parent equal access under Federal, State and county guidelines

1. The Court has erred in its December 16<sup>th</sup>, 2008 ruling.
  - Parental Interference and denial of parenting time with out any 'finding of fact'.
  - Continued denial of 'due process'.
  - Further relief. 60-1703 K.S.A.

Statement of Facts:

1. The current non journalized order of the court, Judge David Debenham, of December 16, 2008 is in has error and can not base the respondents parenting time on the conditions of the minor child.

**93450 -- In re Marriage of Kimbrell -- Green -- Kansas Court of Appeals published opinion and standard of review:**

*“Kimbrell appeals the trial court's decision regarding parenting time with his 16-year-old son Evan Kimbrell. The issue in this case is whether the trial court can condition a noncustodial parent's right to parenting time with his or her minor child upon the desires of the child. **We determine that this cannot be done.**”*

*K.S.A. 2004 Supp. 60-1616(a) makes it clear that a parent has a right to reasonable parenting time with his or her minor child "unless the court finds, after a hearing, that the exercise of parenting time would seriously endanger the child's physical, mental, moral or emotional health." **Conditioning parenting time on the wishes of a minor child improperly gives the child the authority to determine a noncustodial parent's rights to parenting time and visitation and can have the effect of completely denying the noncustodial parent's rights to parenting time.***

In the same Appeal:

*The trial court can not base parenting time contingent on the condition of 'therapy' as this serves a denial of due process by giving a mental health profession the 'control' of a parental rights.*

Therefore, the Odyssey report of Dec 16<sup>th</sup>, 2008 recommendations of 'therapy' and parenting, the Court continues to error in withholding parenting time on the condition of therapy between minor child and mother, is a denial of mother's right to 'due process'.

*Further;*

It is well established that parents have fundamental rights in the custody and control of their children under the **Due Process Clause of the Fourteenth Amendment** of the United States Constitution. See, *e.g. Troxel v. Granville*, 530 U.S. 57, 65-66, 147 L. Ed. 2d 49, 120 S. Ct. 2054 (2000). In *In re Cooper*, 230 Kan. 57, 64, 631 P.2d 632 (1981),

"The Fourteenth Amendment to the United States Constitution provides: '**No State shall . . . deprive any person of life, liberty, or property, without due process of law.**'

A parent's right to establish a home and direct the upbringing and education of children has long been recognized as a fundamental right protected by the Fourteenth Amendment. [Citations omitted.]"

Kansas law as codified in K.S.A. 2004 Supp. 60-1610(a)(2)-(5) and K.S.A. 2004 Supp. 60-1616(a) and (c) makes it clear that parents have a right to parenting time and visitation with their children, absent exceptional circumstances, such as a threat to the children's welfare that noncustodial parents have a natural right to visitation with their children. See *Maxwell v. LeBlanc*, 434 So. 2d 375, 376 (La. 1983) (right of visitation for noncustodial parent is natural right); *Kulla v. McNulty*, 472 N.W.2d 175, 182 (Minn. App. 1991) ("[V]isitation is to be regarded as a parental right essential to the continuance and maintenance of a child-to-parent relationship between the child and noncustodial parent[.]"); *Young v. Young*, 212 App. Div. 2d 114, 122, 628 N.Y.S.2d 957 (1995) (visitation is joint right of noncustodial parent and child); *Petry v. Pettry*, 20 Ohio App. 3d 350, 352, 486 N.E.2d 213 (1984) (**noncustodial parent's visitation right is natural right and should only be denied under extraordinary circumstances**).

Under K.S.A. 2004 Supp. 60-1616(a), "[a] parent is entitled to reasonable parenting time unless the court finds, **after a hearing**, that the exercise of parenting time would seriously endanger the child's physical, mental, moral or emotional health." **Without such a finding, however, K.S.A. 2004 Supp. 60-1616(a) indicates that a trial court must enter an order for reasonable parenting time.**

**60-1703. Further relief.** Further relief based on a declaratory judgment may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application is sufficient, the court, on reasonable notice, shall require any adverse party whose rights have been adjudicated by the declaratory judgment, to show cause why further relief should not be granted.

WHEREFORE, the respondent request an order be issued immediately restoring parenting time, In COMPLETE accordance with the KS Court of Appeals, State Law and County Guidelines, return of disability benefits back the beneficiary to which they are drawn- the mother, recuse Guardian ad litem Jill Dykes and to do what a court is supposed to do- be 'just' and serve 'Justice'



**Claudine Dombrowski**  
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Cc Judicial Ethics Committee, Attorney General Office-Domestic Violence Task Force Division and Dorothy Halley- Victims Rights Coordinator, Kansas Coalition of Sexual Assault and Domestic Violence, Governor Kathleen Sebelius, Stop Family Violence, NY, NY and the Battered Mothers Custody Conference, Albany, NY

CERTIFICATE OF SERVICE FOLLOWS

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29<sup>th</sup> day of December, 2008, that I filed an **Expedited Judicial Process petition** with the **Clerk of the District Court, Chief Judge Nancy Parrish and Judge Debenham**, 200 SE 7<sup>th</sup> Street, Topeka, Kansas 66603, by facsimile in accordance with Supreme Court Rule 119(b)(3) and sent a copy of the forgoing document, by U.S. Mail, postage prepaid to:

Don Hoffman  
100 E. 9<sup>th</sup> Street  
Topeka, KS 66612

Jill Dykes  
1243 SW Topeka Blvd.  
Topeka, KS 66612

Odyssey



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