

IN THE INTEREST	§	IN THE 140TH DISTRICT COURT
	§	
OF	§	OF
	§	
E. D. KIRBY, K. R. KIRBY	§	
and A. S. KIRBY, Children	§	LUBBOCK COUNTY, TEXAS

STATEMENT OF FACTS

BE IT REMEMBERED that on the 1st day of June, 1981, hearing on the above entitled and numbered cause was held before the Honorable William R. Shaver, Judge Presiding, with GAIL THOMPSON, Petitioner, being represented by her attorney, Kennett Hobbs, and Ray Fargason, Guardian Ad Litem for the children, ERIC DALE KIRBY, KELSEY RAY KIRBY and ANDREW SCOTT KIRBY, and Donald E. Cummings, Attorney Ad Litem for the Respondent, EARL RAY KIRBY, all present.

At said hearing, the following evidence was entered as to:

I.

Citation by publication issued by the Clerk of this Court on January 27, 1981 and the Publisher's Affidavit showing the publication of same in the Idalou Beacon, a newspaper of general circulation in Lubbock County, Texas and a legal newspaper for such purposes, on January 30, 1981, addressed to EARL RAY KIRBY, said citation being in full compliance with the provisions of Section 11.09 of the Texas Family Code.

II.

GAIL THOMPSON, upon being duly sworn, stated as follows:

\*I am the Petitioner in Cause No. 77,177 styled In the Interest of E. D. KIRBY, K. R. KIRBY and A. S. KIRBY, Children and am familiar with the facts and circumstances surrounding ERIC DALE KIRBY, a male born February 13, 1966, in San Diego, California, KELSEY RAY KIRBY, a male born in Racine, Wisconsin

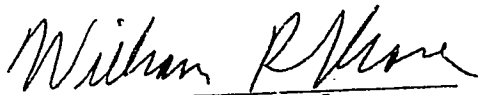
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 DISTRICT CLERK LUBBOCK COUNTY TEXAS  
 DEPUTY

on December 5, 1968, and ANDREW SCOTT KIRBY, a male born in Lubbock, Texas on May 15, 1971. The father of each of these children is my former husband, EARL RAY KIRBY, from whom I was divorced in February, 1975, by a Decree entered in this cause to-wit Cause No. 77,177 in the 140th District Court of Lubbock County, Texas. I was designated as Managing Conservator and granted custody of the children in the Divorce Decree and my husband was ordered to pay the sum of \$25.00 per month per child in child support. As of the date of this hearing, the child support records in the District Clerk's office in Lubbock County, Texas reflect that the said EARL RAY KIRBY is in arrears the sum of \$2,585.00 in child support. To the best of my knowledge, the said EARL RAY KIRBY is regularly employed by General Telephone Company and works in and around Purcell, Oklahoma. Although I have made repeated efforts to get in touch with him, both by contacting him personally and through his mother who resides in Lubbock, Texas, I have been unable to do so. In spite of repeated efforts on my part to obtain payment of the child support, he has steadfastly refused to support the children in accordance with the Court's Order and in accordance with his ability to do so for a period of more than one (1) year preceding the date of the filing of the Petition in this Cause. Further, the said EARL RAY KIRBY has not visited the children on a regular basis, has not observed their birthdays, Christmas or exhibited any particular interest in the children whatsoever for a period of at least five (5) years. He has not chosen to exercise such rights, does not come to see the children or request that they visit him, does not call and visit with the children by telephone, has not contacted me to inquire about the welfare or otherwise sought contact with or evidenced concern for the children. Because of the long separation and the complete lack of any interest in the children, the said EARL RAY KIRBY would be a "stranger" should he appear to exercise his visitation rights. EARL RAY KIRBY on two occasions during the Christmas holiday season of 1979, became enraged with our son Scott and attempted to choke him. Because of this and other incidents involving physical roughness with the boys, they are each afraid of him and have no desire to be with or visit him. I have been married to J. O. Thompson with whom the children have resided since March, 1975, and by virtue of the emotional bonds thus created, the children look to him and respect him as their father. It is the intention of J. C. Thompson to adopt the children if the Court eliminates the rights of EARL RAY KIRBY as I am requesting. In summary, in my view, EARL RAY KIRBY has not supported the children commensurate with his ability to do so for a period exceeding one (1) year and, further, has had almost no contact with them over the last five (5) years which causes me to believe that the termination of the parent-child relationship existing between EARL RAY KIRBY and the three (3) children would be in the best interest of each of said children.

At the suggestion of my attorney, I made various attempts to contact EARL RAY KIRBY, but have been unsuccessful in doing so except on one occasion when I talked to him by phone about this particular

matter. At that time I told him I was going to file this suit to terminate his rights and to have J. O. adopt the children. He would not agree to that but did say that I should "do what you have to do but don't be unpleasant about it." On at least two (2) occasions, I have attempted to have him served with citation when he was here for periodic visits. The Sheriff in Purcell, Oklahoma was unable to contact him for service even though he made a vigorous effort to do so over a period of some weeks. I had citation by publication published in the Idalou Beacon, a newspaper of general circulation in Lubbock County, Texas, and I here under oath swear that I have never been contacted by EARL RAY KIRBY or anyone else who has any actual knowledge as to his current whereabouts since the publication of said citation."

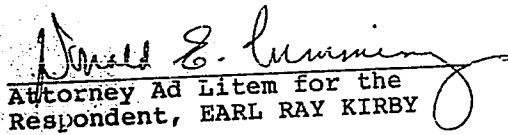
The above and foregoing facts are hereby approved.



WILLIAM R. SHAVER, Judge  
140th District Court  
Lubbock County, Texas

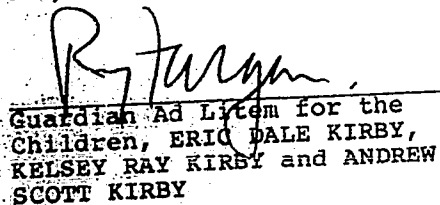
APPROVED:

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Guardian Ad Litem for the  
Children, ERIC DALE KIRBY,  
KELSEY RAY KIRBY and ANDREW  
SCOTT KIRBY