

IN THE PASCUA YAQUI COURT OF APPEALS

In the Matter of:)
LINDA GALAS &)
JULIAN BUSTAMANTE)
ORDER)

Yancy A. Jencsok, Esq., Pascua Yaqui Legal Services, Tucson, Arizona, for the Appellant.

The Court finds as follows:

1). On August 2, 2002, sole custody of the two minor children, Julian Bustamante and Linda Galaz, was given to their father, Appellee/Respondent Alex Galaz, through Child Welfare Case No. CW-97-002.

2). On or about April 2, 2003, the mother, Appellant/Petitioner Gloria Bustamante, filed a Petition for Visitation with the Trial Court (Case No. CV-03-078). The Trial Court granted the mother temporary visitation on July 11, 2003.

3). On May 11, 2004, the mother filed a Petition for Child Custody concerning the two children with the Trial Court. On June 25, 2004, the mother filed a Motion for Temporary Custody. Following a hearing that took place on July 15, 2004, the Trial Court left sole custody of the children with their father.

4). The Trial Court held a hearing on the mother's Petition for Child Custody and entered a Final Decision on August 17, 2004. The Trial Court's Final Decision shows that it granted both parents joint custody of the two children, left physical custody

of the two children with the father, and granted the mother visitation every Saturday from 8:00 A.M. to 8:00 P.M. The mother was also allowed to keep the children overnight "if and only if she provides proof to the court that she has adequate housing and beds sufficient to house herself [and] her two youngest children ... during such overnight stays." Trial Court's Final Decision at 3.

5). The mother filed a Notice of Appeal on August 31, 2004, alleging that the Trial Court should have granted her sole custody of the two children; or in the alternative, she should have been granted reasonable visitation with the children, which would include reasonable overnight stays. The mother also requested "a one-justice proceeding" on appeal and oral argument.

6). On July 29, 2005, the mother filed a motion requesting dismissal of her Notice of Appeal. On August 5, 2005, the mother withdrew her motion to dismiss the appeal.

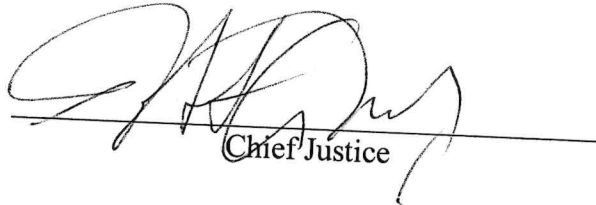
After review of the appellate record, the Court enters the following decision:

1). The motion for "a one-justice proceeding" is granted. The motion for oral argument is denied.

2). That part of the Trial Court's Final Decision that granted both parents joint custody of the two children and primary physical custody with the father is affirmed. It is in the children's best interest to have the father maintain primary physical custody because the mother is not employed and does not have sufficient space in her two bedroom apartment for the children, Julian Bustamante and Linda Galaz, and their "two other siblings." Trial Court's Final Decision at 2.

3). All of that part of the Trial Court's Final Decision granting the mother visitation, including the part on overnight visitation, is reversed because it is unreasonably restrictive and not in the best interests of the children. The parent who does not have primary physical custody of the children is entitled to reasonable visitation. 1 P.Y.T.C. § 10.24(A). On remand, the Trial Court shall hold another hearing or meet with the parents to determine a less restrictive visitation schedule for the mother that includes non-restrictive overnight stays and the sharing of responsibility for transportation of the children to and from visits with the mother.

So ORDERED this 8th day of June, 2006.


Chief Justice

Yancy A. Jencsok
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PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

05 AUG 15 AM 11:45

DOCKET NO. CV-04-111
CLERK CW

IN THE APPELLATE COURT OF THE YAQUI NATION

In the Matter of:)
)
GALAS, LINDA, and,)
BUSTAMANTE, JULIAN,)
)
minor children.)
_____)

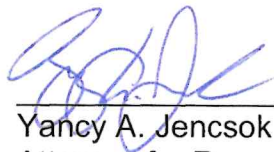
Appellate Case No. CA-04-003
Trial Case No. CV-04-111
NOTICE OF ADDRESS CHANGE

Please take notice that although counsel will be leaving Pascua Yaqui Legal Services, he will continue to represent Petitioner/Appellant Gloria Bustamante.

Counsel's new address and phone are:

Yancy A. Jencsok
Jencsok Law Office
P.O. Box 12968
Tucson, AZ 85732
(520) 318-0041

RESPECTFULLY SUBMITTED this 15th day of August, 2005.



Yancy A. Jencsok
Attorney for Respondent/Appellant

Copy of the foregoing mailed August 15, 2005, to:

Alex Galas, Sr.
5081 Calle Tetakusim
Tucson, AZ 85746

Gloria Bustamante
3511 South 12th Ave. #1103
Tucson, AZ 85713

by  _____

05 AUG -5 PM 4: 35

DOCKET NO. CV-04-111

CLERK 

Yancy A. Jencsok
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Tucson, AZ 85757
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(520) 879-5752 fax

IN THE APPELLATE COURT OF THE YAQUI NATION

In the Matter of:)	Appellate Case No. CA-04-003
)	
GALAS, LINDA, and,	)	Trial Case No. CV-04-111
BUSTAMANTE, JULIAN,)	
	)	APPELLANT'S WITHDRAWAL OF
minor children.	)	MOTION TO DISMISS
_____)	

Appellant/Petitioner Gloria Bustamante, through her attorney, hereby withdraws her motion to dismiss. Appellant/Petitioner has reconsidered her decision and feels that it is in the best interests of the minor children that she proceed with the appeal.

RESPECTFULLY SUBMITTED this 5th day of August, 2005.



Yancy A. Jencsok
Attorney for Appellant/Petitioner

Copy of the foregoing mailed August 5, 2005, to:

Alex Galas, Sr.
5081 Calle Tetakusim
Tucson, AZ 85757

Gloria Bustamante
3511 South 12th Ave. #1103
Tucson, AZ 85713

By  _____

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05 JUL 29 PM 3: 04

DOCKET NO. CA-04-003
CLERK CW

IN THE APPELLATE COURT OF THE YAQUI NATION

In the Matter of:	)	Appellate Case No. CA-04-003
)	
GALAS, LINDA, and,	)	Trial Case No. CV-04-111
BUSTAMANTE, JULIAN,)	
	)	APPELLANT'S MOTION TO DISMISS
minor children.)	
_____)	

Appellant/Petitioner Gloria Bustamante, through her attorney, requests that the Court dismiss her appeal. As grounds therefore, Appellant/Petitioner states the following:

1. After consultation with counsel, Appellant/Petitioner has decided that she does not wish to proceed with the appeal.
2. Appellee/Respondent has not filed a Brief in Response.
3. The Court has not heard oral arguments.

WHEREFORE, Appellant/Petitioner requests that the appeal be dismissed.

RESPECTFULLY SUBMITTED this 29th day of July, 2005.

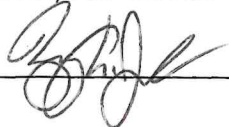


Yancy A. Jencsok
Attorney for Appellant/Petitioner

Copy of the foregoing motion and accompanying proposed order mailed July 29, 2005, to:

Alex Galas, Sr.
5081 Calle Tetakusim
Tucson, AZ 85757

Gloria Bustamante
3511 South 12th Ave. #1103
Tucson, AZ 85713

By  _____

Yancy A. Jencsok
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IN THE APPELLATE COURT OF THE YAQUI NATION

In the Matter of:)	Appellate Case No. CA-04-003
)	
GALAS, LINDA, and,	)	Trial Case No. CV-04-111
BUSTAMANTE, JULIAN,)	
	)	ORDER TO DISMISS
minor children.)	
_____)	

Having read Appellant's Motion to Dismiss filed herein, the Motion being unopposed, and good cause appearing,

IT IS ORDERED that the appeal is dismissed.

DATED this _____ day of _____ 2005.

Judge of Pascua Yaqui Court of Appeals

Date _____
cc: ___ Appellant ___ Appellee ___ PYLS

Clerk

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Tucson, AZ 85746
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CA-04-003
CN

IN THE APPELLATE COURT OF THE YAQUI NATION

In the Matter of:) Appellate Case No. CA-04-003
)
GALAS, LINDA, and,) Trial Case No. CV-04-111
BUSTAMANTE, JULIAN,)
) **APPELLANT'S BRIEF**
minor children.)
_____)

JURISDICTION

Appellant filed a timely appeal of a Pascua Yaqui Tribal Court Order. The Appellate Court has jurisdiction pursuant to 11 P.Y.T.C. §1.12.

STATEMENT OF FACTS

Appellant/Petitioner is Gloria Bustamante. Appellee/Respondent is Alex Galaz, Sr. The parties have four children together. The two children that are the subject of this action are Julian Bustamante and Linda Galaz. At the time of filing, Alex Galaz had sole custody of the children through child welfare case no. CW-97-002, by court order dated August 2, 2002.

Subsequent to the child welfare case, Gloria Bustamante filed a Petition for Visitation in Pascua Yaqui Tribal Court, case no. CV-03-078 on or about April 2, 2003. A temporary visitation order was issued on July 11, 2003 based on an agreement between the parties. No further proceedings took place in that case.

On May 11, 2004, Ms. Bustamante filed a Petition for Child Custody. On June 25, 2004, Ms. Bustamante filed a Motion for Temporary Custody. A hearing on temporary custody was held on July 15, 2004. The trial court left sole custody with Mr. Galaz and granted Ms. Bustamante temporary visitation with the minor children.

On August 12, 2004, the court held an evidentiary hearing on permanent custody of the children. Judge Melvin Stoof presided. Judge Stoof granted a change in legal custody from sole to joint. Judge Stoof left physical custody of the children with Mr. Galaz and granted Ms. Bustamante visitation.

Gloria Bustamante based her request for a change in custody in part on reports from her children and in part on direct observation. She testified as to the children's reports and her own observations. She also presented testimony regarding her parenting ability from herself, her sister Vicki Bustamante-Nunez, and Annette Carr, a parent education service provider. Mr. Galaz appeared at the August 12, 2004 hearing and cross-examined Ms. Bustamante and her witnesses; however he did not testify nor did he present witnesses. He also failed to file a response to the Petition for Child Custody or any other pleadings. To determine the children's wishes as to custody and visitation, Judge Stoof interviewed the children separately in chambers.

FINDINGS/CONCLUSION APPEALED FROM

Appellant appeals from the Order of the Pascua Yaqui Tribal Court issued on August 17, 2004. That Order denied Appellant's Petition to change custody of the parties minor children Julian Bustamante and Linda Galaz. The reason given was that it was in the children's best interests that they remain in the physical custody of their

father, Alex Galaz, Sr. The court also granted Ms. Bustamante only limited visitation with no overnights. No reason was given.

ARGUMENT

A. THE BEST INTERESTS OF THE CHILDREN INDICATE THAT APPELLANT SHOULD HAVE BEEN GRANTED PHYSICAL CUSTODY.

The Pascua Yaqui Tribal Code directs the court to consider “the best interests of the child” when determining custody. 1 P.Y.T.C. §10.19(A). Ms. Bustamante presented favorable testimony on each of the best interest factors.

“1. The wishes of the child’s parent or parents as to his custody.” Ms.

Bustamante filed detailed pleadings and testified at length regarding her wishes as to custody and the reasons for her request. Mr. Galaz indicated verbally that he opposed Ms. Bustamante’s request but otherwise presented no evidence on this issue. In addition, it was undisputed that Linda Galaz was not living in the household of Mr. Galaz and that this was with Mr. Galaz’s permission. At the time of the August 12, 2004 hearing, Linda Galaz had been living with relatives for several months (first with Tanya Castello, Mr. Galaz’s sister-in-law, next door to Mr. Galaz and later with a cousin, Rosie Hickman). This indicates that Mr. Galaz did not want custody of Linda.

“2. The wishes of the child as to his custodian.” In her pleadings and testimony, Ms. Bustamante indicated that both children had told her that they wanted to live with her rather than their father. Mr. Galaz did not dispute this. And as indicated in the above paragraph, Linda was in fact not living with Mr. Galaz, implying that she did not want to live with him. Lastly, Judge Stoof interviewed the children privately in chambers

as to their wishes.

“3. The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child’s interests.”

Ms. Bustamante and her sister, Vicki Bustamante-Nunez, both testified that Ms. Bustamante has a very close relationship with Linda and Julian. In addition, Ms. Bustamante testified that Linda and Julian get along well with her two younger children when Linda and Julian visit. Ms. Bustamante testified that Linda and Julian do not like Mr. Galaz’s wife, Andrea Galaz, and that they did not get along with her and that this was one reason Linda was not living with Mr. Galaz. Mr. Galaz did not dispute this testimony.

“4. The child’s adjustment to his home, school and community.” As discussed above, the undisputed testimony was that the children were not well adjusted at home, to the degree that Linda actually moved out of the home, and also that Mr. Galaz’s home was dirty, low on food, and that the children were not properly cared for. In contrast, Ms. Bustamante presented evidence that she provided a safe, clean and loving environment for her two younger children and that she could provide the same for Linda and Julian.

“5. The mental and physical health of all individuals involved.” The testimony was that Ms. Bustamante has some physical health problems, but that they do not affect her ability to care for the children. Mr. Galaz has no physical health problems. Regarding mental health, the testimony was that both parties had a history of drug and alcohol abuse. Both parties had also had periods of sobriety. Ms. Bustamante testified that she was not using drugs (other than those prescribed to her for her physical health

problems) and that she was not abusing alcohol. She testified that she was concerned that Mr. Galaz might be abusing drugs and alcohol again. She testified that she had directly observed Mr. Galaz under the influence on several occasions during visitation exchanges in January 2004. She also testified that the children had reported to her that both Mr. Galaz and his wife Andrea were using drugs and alcohol. Mr. Galaz did not allege that Ms. Bustamante was using drugs or abusing alcohol nor did he deny that he and his wife were using drugs and alcohol.

B. IF SHE WAS NOT GRANTED PHYSICAL CUSTODY, APPELLANT WAS ENTITLED TO REASONABLE VISITATION RIGHTS.

The Pascua Yaqui Tribal Code states that “[a] parent not granted custody of the child is entitled to reasonable visitation rights.” 1 P.Y.T.C. §10.24(A). Those rights can be limited only if the court finds that “visitation would endanger seriously the child’s physical, mental, moral or emotional health.” *Id.* In its Order of August 17, 2004, the court limited Ms. Bustamante’s visitation to one day per week with no overnight visits. Overnight visits are not allowed under the Order unless Ms. Bustamante provides to the court proof “that she has adequate housing and beds sufficient to house herself, her two youngest children, Julian, and Linda during such overnight stays.” This is not a reasonable visitation schedule.

The Tribal Code does not contain a definition of what “reasonable visitation” consists of. It is Appellant’s position that reasonable visitation should include overnight visits, visits during the holidays, visits during school breaks and summer, etc. Because the visitation rights granted to Ms. Bustamante are not reasonable, the court must make

findings that the visitation has been limited because to do otherwise “would endanger seriously the child’s physical, mental, moral or emotional health.” Id. The court made no such findings. It made no such findings because it could not have made such findings. The testimony was that although Ms. Bustamante lived in a small apartment, the apartment was clean and well stocked with food. And although the children would not have had their own room, they each would have had a suitable place to sleep. (Ms. Bustamante testified that if she were to be granted physical custody of the children, she would move to a larger apartment).

In his findings, Judge Stoof also seems to indicate that Ms. Bustamante will be required to provide all transportation for visitation; however, this requirement is not reflected in the order. If this was meant to be a further restriction on her visitation, it is also unreasonable. The parties should split responsibility for visitation transportation.

CONCLUSIONS

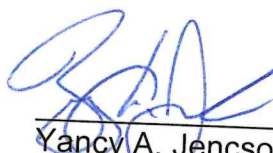
In her pleadings and at trial, Ms. Bustamante presented evidence that: the children wanted to live with her; the children were not getting along with their step mother; Linda was not living with Mr. Galaz at all; Mr. Galaz was abusing alcohol and illegal drugs; Mr. Galaz’s house was dirty and there was no food in the house; arriving for visitation, Julian was often dirty and was not dressed appropriately; and Julian was often alone with no adult supervision. Ms. Bustamante also presented evidence that she was not using illegal drugs or abusing alcohol; she had a close relationship with Julian and Linda; and she could provide a safe and loving home for the children.

Some of the evidence presented by Ms. Bustamante was second hand, coming

as it did through the children; however, this evidence was not objected to by Mr. Galaz and it was not excluded by the court. In addition, Ms. Bustamante presented ample direct evidence and the court had the opportunity to interview the children in chambers and hear from them directly. Mr. Galaz on the other hand, filed no pleadings and presented no testimony or evidence, direct or otherwise. (In the first full paragraph of page 3 of the court's order the court finds that Mr. Galaz "testified" regarding Ms. Bustamante's drug abuse. In fact, Mr. Galaz did not testify. Rather, he asked Ms. Bustamante questions on cross examination. When Mr. Galaz was given the opportunity to testify on his behalf, he declined.)

Ms. Bustamante proved her case and should have been granted physical custody of Linda and Julian. At the very least, Ms. Bustamante should have been granted a reasonable visitation schedule.

RESPECTFULLY SUBMITTED this 21st day of September, 2004.



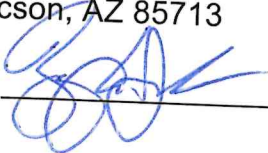
Yancy A. Jencsok
Attorney for Appellant/Petitioner

Copy of the foregoing mailed this 21st day of September, 2004, to:

Alex Galas, Sr.
5081 Calle Tetakusim
Tucson, AZ 85746

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Tucson, AZ 85713

By



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FILED
CY-04-003
[Signature]

IN THE APPELLATE COURT OF THE YAQUI NATION

In the Matter of:)	Appellate Case No.
)	
GALAS, LINDA, and,	)	Trial Case No. CV-04-111
BUSTAMANTE, JULIAN,)	
	)	NOTICE OF APPEAL
minor children.)	
_____)	

1. Notice is hereby given that Petitioner/Appellant Gloria Bustamante appeals to the Appellate Court of the Yaqui Nation from the judgment entered in this action by Judge Melvin Stoof on the 17th day of August, 2004.
2. The Appellant believes the trial court was in error because: the decision not to grant Petitioner/Appellant Gloria Bustamante custody of the minor children, or a reasonable visitation schedule including overnight visits, was not supported by the evidence presented at trial or the best interests of the children pursuant to 1 P.Y.T.C. §10.19(A).
3. The Appellant requests a one-Justice appellate proceeding.
4. The Appellant requests oral arguments.

Respectfully submitted this 31st day of August, 2004.

[Signature]

Yancy A. Jencsok
Attorney for Appellant

Copy of the foregoing mailed this 31st day of August, 2004, to:

Alex Galas, Sr.
5081 Calle Tetakusim
Tucson, AZ 85746

Gloria Bustamante
3511 South 12th Ave. #1103
Tucson, AZ 85713

By

A handwritten signature in blue ink, appearing to be "AG", is written over a horizontal line.

IN THE PASCUA YAQUI COURT OF APPEALS

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

IN THE MATTER OF:	JUDGE:	MELVIN STOOF
RE:	LEGAL COUNSEL:	YANCY JENCOSK
GALAZ/BUSTAMANTE	PETITIONER:	GLORIA BUSTAMANTE
CHILDREN	RESPONDENT:	ALEX GALAZ

CV-04-111

CUSTODY HEARING DATE: AUGUST 12, 2004
.....

JUDGE: This is CV-04-111, in the matter of Linda Galaz and Julian Bustamante. What I generally do is exclude the children from the Court room in formal proceedings. I understand there was a motion to interview the children in chambers. So at this time I am going to have the children step out for purposes of the custody hearing. So if we can have them escorted out and we will call upon you if we need to have you testify. I appreciate it.

LEGAL COUNSEL: And are...your honor, I understand that you...you were going to speak with them privately...

JUDGE: Yes.

LEGAL COUNSEL: after the hearing?

JUDGE: Yes that is true, that is true. I granted that request. The code indicates that the court in it's discretion can consider the wishes of a child to his custodian and this is under section 10.19 of the Pascua Yaqui Tribal Code under the modification of child custody. The Court after these proceedings here will allow and interview with the children in chambers and this is also to insure that neither parent...I'm not suggesting it's happening here, but it's to avoid any impropriety that either parent is somehow suggesting to the children what they should be testifying about. So it's going to be held in private. The proceeding...the procedure is the clerk and I are there and we tape record it and it's sealed and no one gets an opportunity to review that. But it is preserved in an event there is an appeal and only the Court of Appeals would have it, and neither party can have access to what the child have said. So that's the process.

Ready to proceed with this case?

LEGAL COUNSEL: Yes, your honor.

JUDGE: Are you ready to proceed Mr. Galaz?

RESPONDENT: Yes.

JUDGE: Okay, anyone who's going to testify let's swear everybody in here but once. Anyone who's going to testify in the case please raise your right hand. Do you swear or affirm that the testimony you are about to give is the whole truth and nothing but the truth so help you God?

WITNESSES: I do. Yes.

JUDGE: Everyone has been duly sworn. Okay Mr. Jencsok, would you care to call your first witness?

LEGAL COUNSEL: Yes your honor. I call Annette Carr to the stand.

JUDGE: Could you spell your name for me Ms. Carr?

WITNESS: A-N-N-E-T-T-E -- C-A-R.

JUDGE: Proceed.

LEGAL COUNSEL: Okay, thank you. Ms. Carr, what is your occupation?

WITNESS: I'm a Case Manager of Early Interventionist with the division of Developmental Disabilities.

LEGAL COUNSEL: Okay, and uh...uh...where...where specifically do you work?

WITNESS: Uh...you mean location wise?

LEGAL COUNSEL: The name of the agency?

WITNESS: I work for a program called Community Psychology and Educational Services. We contract with ...with the Division to provide services to children (unintelligible).

LEGAL COUNSEL: Okay, what is the address of that uh....

WITNESS: It's 2020 North Forbes, Suite 105, Tucson AZ 85745.

LEGAL COUNSEL: Do you know Gloria Bustamante?

WITNESS: Yes I do.

LEGAL COUNSEL: How do you know her?

WITNESS: I was assigned to work with her child Oscar and her....

LEGAL COUNSEL: Okay, and uh...getting back to your employment with Community Psychological and Educational Services uh...what exactly do you do there?

WITNESS: What we do is we are assigned children through the division from birth to 3 who have developmental delays which Oscar does and we go into the home and we work with the child for approximately an hour to an hour and a half a day...uh...once a week and we also work with the parents just...you know parenting skills or if they have questions, that type of stuff.

LEGAL COUNSEL: Okay, and how long have you been working at your current ...current employment?

WITNESS: I have been with CPES for 11 years.

LEGAL COUNSEL: Did you have other jobs in that field prior to working there?

WITNESS: Yes, I've been doing this for 20 years total.

LEGAL COUNSEL: And do you have any special training certificates?

WITNESS: Uhm...actually I do a lot of training through the state and we are going through uhm...like certification right now, but everyone in the division has to have a certification. But we do trainings throughout the year.

LEGAL COUNSEL: You said your providing services for Gloria, okay....

WITNESS: Correct.

LEGAL COUNSEL: when did you start providing services?

WITNESS: Approximately two in a half, three months ago.

LEGAL COUNSEL: Okay, and how did the...how did they get started...how...how did that come about, that she was receiving services?

WITNESS: The referral was put in through Dr. Garcia, her doctor and once that happens the division interviews her. They do an intake and they send us into the home and it's all voluntary services too.

LEGAL COUNSEL: Okay, and how often do you go to her home?

WITNESS: I go once a week, approximately an hour to one and a half hours a week.

LEGAL COUNSEL: Is it the same day every week or different ...

WITNESS: Uh, unless another...something comes up, but ...typically on Wednesday at 11:30.

LEGAL COUNSEL: And could you describe what you do in that hour in a half visit with Gloria?

WITNESS: I typically bring toys in and we just work with Oscar trying to get him to use his voice and stuff. Sometimes...when I first started going he kicked me and pushed me and stuff like that, so Gloria and I talked about ways of working around that, either ignoring the behavior and just going on to something else or trying to redirect him and uh...that's pretty much how our sessions go. After each session I write notes, write down like recommendations, things she can do for the week or if she has specific questions or you know she recently said she likes to get a phone so we have been working on that recently with her. So were also there...were also available for if she needs help with rent or getting her phone turned back on, you know that type of stuff.

LEGAL COUNSEL: Uh-huh, and is your work just with Oscar, do you work also...does Gloria participate?

WITNESS: Yes, Gloria does participate. She stays in the living room with us, we usually sit on the floor and we'll play with Oscar, and you know during that time Gloria has questions she asks them to me, and definitely we do request that the parent participate in the sessions. That way they can follow through whatever that we are recommending.

LEGAL COUNSEL: Okay and are there...do you ever discuss parenting issues or discipline or methods of discipline and that type of thing?

WITNESS: We talk about that sometimes, you know Gloria's been concerned about Oscar's crying when she leaves. Uhm...that type of stuff. Uhm... you know about using timeout versus spanking. So

whenever she has specific questions, then we'll just go over it and usually how something comes up or if Oscar acting out somehow she'll say that " what I'm describing to you, what should I do with that?". So that's when we get to specifics.

LEGAL COUNSEL: Okay and so you had an opportunity to observe her interactions with Oscar?

WITNESS: Yes.

LEGAL COUNSEL: And again, how old is Oscar?

WITNESS: Oscar will be...he's two and seven months right now.

LEGAL COUNSEL: And she has another child living with her named Juan?

WITNESS: Yes she does, yeah. That's also...that's her son, yes.

LEGAL COUNSEL: How old is he?

WITNESS: I believe Juan is a year, I'm not quite sure how old he is.

UNKNOWN: A year.

LEGAL COUNSEL: And have you observed her interaction with Oscar and Juan?

WITNESS: Yes I have.

LEGAL COUNSEL: What can you tell me about that in general?

WITNESS: I...most of the...all of the interaction that I've observed to date have been appropriate. I go in the house it's always clean, their always waiting for me. Gloria has never missed an appointment with me and like I stated these are voluntary services so she's allowing us to come in to the home and work with her and the kids.

LEGAL COUNSEL: And have you observed her discipline either child while you were there?

WITNESS: Uhmm...I haven't. Typically were the ones that are kind of doing the disciplining and what we do...we just ah...just so that...some role modeling so that the...

LEGAL COUNSEL: Ah-huh...

WITNESS: Moms will see the kind of stuff that we're...we're doing, and...and I...I believe she's following through with some of the stuff that we do, like ignoring some of the crying and stuff because I...Oscar's um...behaviors...his aggressive behavior have decreased a lot and typically we see that when the parents carry through with what we're recommending...

LEGAL COUNSEL: Um-huh...

WITNESS: then we start...start to see progression and I've seen a lot in Oscar actually...

LEGAL COUNSEL: okay....

WITNESS: he's done really well.

LEGAL COUNSEL: And specially what is his ah...developmental disability?

WITNESS: It's...it's speech delay at this point, but he also has some behavioral issues too, like...like the kicking and hitting and stuff when I first came in but a lot of those have not...I mean they've decreased already since we've been working with him. Like I said we can re-direct him or we just ignore the behavior for right now and if...and he seems to come around pretty easily.

LEGAL COUNSEL: Okay and ah...do...does Gloria seem to have an affectionate relationship with her...

WITNESS: Definitely.

LEGAL COUNSEL: children?

WITNESS: (chuckle)...yes, yeah. Her...you...I mean...her son...and son seem to be very bonded to her...

LEGAL COUNSEL: okay...

WITNESS: very attached to her.

LEGAL COUNSEL: Okay. Have you seen...ah have you met Gloria's older children ah...Julian and Linda?

WITNESS: Just today.

LEGAL COUNSEL: Okay. You haven't seen her...

WITNESS: No.

LEGAL COUNSEL: with them...

WITNESS: uhmm-uhmm.

LEGAL COUNSEL: prior to today?

WITNESS: No.

LEGAL COUNSEL: Okay. Do you ah...know Alex Galaz Sr. at all?

WITNESS: No.

LEGAL COUNSEL: Okay. I don't have any other questions, your honor.

JUDGE: Mr. Galaz, you have an opportunity to cross-examine or question this witness about any testimony that she has provided here. Would you like to do so?

RESPONDENT: No.

JUDGE: Okay, thank you Ms. Car, you can have a seat and if you leave the court room don't discuss your testimony with anyone else okay? Thank you.

Do you have any other witnesses?

LEGAL COUNSEL: Ah...yes your honor, I'd like to call Vicky Bustamante Nunez.

JUDGE: And you took an oath earlier Ms. Bustamante?

WITNESS: Yeah.

JUDGE: Okay.

LEGAL COUNSEL: Could you state your name for the record please?

WITNESS: Vicky Bustamante Nunez.

LEGAL COUNSEL: Okay and ah...what...what is your address?

WITNESS: 7394 South Mission Road.

LEGAL COUNSEL: What is your relationship with Gloria Bustamante?

WITNESS: I'm her older sister.

LEGAL COUNSEL: Okay, so you've known her your whole

WITNESS: Yes.

LEGAL COUNSEL: her whole life? And do you know her children Julian and Linda?

WITNESS: Yes.

LEGAL COUNSEL: Okay, you've known them their whole life also?

WITNESS: Yes.

LEGAL COUNSEL: Okay, and how about Mr. Galaz?

WITNESS: Yes.

LEGAL COUNSEL: Okay, ah...when's the last time you seen ah...Mr. Alex Galaz?

WITNESS: ah...

LEGAL COUNSEL: Prior to today?

WITNESS: In Court the last time...

LEGAL COUNSEL: The last time...

WITNESS: We were here.

LEGAL COUNSEL: Okay, prior to that?

WITNESS: I guess ah...this Saturday, when I picked up the kids.

LEGAL COUNSEL: Okay.

WITNESS: He just drops them off and leaves.

LEGAL COUNSEL: Other than that, have you had any contact with him...

WITNESS: No.

LEGAL COUNSEL: recently?

Um...now do you ah...see your sister Gloria a lot?

WITNESS: Yes.

LEGAL COUNSEL: How often would you say you see her?

WITNESS: Um...about maybe three or four times a week.

LEGAL COUNSEL: Okay, and do you...on the days that you don't see her in person, do you speak with her on the phone?

WITNESS: Yes.

LEGAL COUNSEL: Okay. So how many out of...out of the week, how often would you have contact with her either in person or on the phone?

WITNESS: Five days.

LEGAL COUNSEL: Five days?

WITNESS: Um-huh.

LEGAL COUNSEL: Okay. When you see her in person ah...how long are you seeing her for each time?

WITNESS: Ummm....ahhh....I would guess maybe four...four hours....

LEGAL COUNSEL: Four hours?

WITNESS: a day.

LEGAL COUNSEL: Okay. And is that...are you going to visit her or is she coming over to visit you?

WITNESS: Ah...both.

LEGAL COUNSEL: Both, okay. So you had an opportunity to see her apartment?

WITNESS: Yes.

LEGAL COUNSEL: Okay. Can you describe it?

WITNESS: Umm...she has furniture, she has food, she has toys for the kids. It's a two bedroom, ah...pictures of all the kids all his six kids and um...she has food, she...it's clean...

LEGAL COUNSEL: Um-huh.

WITNESS: It's a typical home.

LEGAL COUNSEL: Okay. And she lives there with her...her two sons, Juan and Oscar?

WITNESS: Yes.

LEGAL COUNSEL: Okay. Have you seen her interacting with Juan and Oscar?

WITNESS: Yes.

LEGAL COUNSEL: Okay. Can you describe their interactions?

WITNESS: Um...very motherly...um...their very attached to her.

LEGAL COUNSEL: Um-huh.

WITNESS: Um...

LEGAL COUNSEL: How do you know that?

WITNESS: Um...for one, because Oscar cries every time she leaves him, when she needs to be by herself to do things on her own...and especially when she comes back they both get very excited, and they go running to her.

LEGAL COUNSEL: Uh-huh. And do they show affection toward each other?

WITNESS: Yes.

LEGAL COUNSEL: What...how do they do that?

WITNESS: Um...a lot of hugging and kissing and playing and laughing and tickling.

LEGAL COUNSEL: Um-huh, okay. Have you ever seen her...ah, discipline Oscar or Juan?

WITNESS: Um...Oscar mostly.

LEGAL COUNSEL: What do you see?

WITNESS: Um...she disciplines him verbally.

LEGAL COUNSEL: Uh-huh.

WITNESS: Ah...just recently...um...she and I started putting him in time out, and that's different especially for Oscar.

LEGAL COUNSEL: She's not used to that?

WITNESS: No.

LEGAL COUNSEL: Is that...does that work?

WITNESS: Yeah, it does.

LEGAL COUNSEL: Okay. Um...do the kids ah....do Juan and Oscar ever...do they appear well fed and clean?

WITNESS: Um...my sister gives them a bath everyday and changes their clothes everyday...

LEGAL COUNSEL: Um-huh.

WITNESS: gives them breakfast, lunch and dinner and snacks...

LEGAL COUNSEL: Okay.

WITNESS: their very well taken care of.

LEGAL COUNSEL: Okay. And ah...have you seen ah...Gloria interact with her two older kids Linda and Julian?

WITNESS: Yes.

LEGAL COUNSEL: On...on what occasions have you seen...

WITNESS: On Saturdays.

LEGAL COUNSEL: Okay, for the visits?

WITNESS: Yes.

LEGAL COUNSEL: And that was...those are the visits that just started recently?

WITNESS: Yes.

LEGAL COUNSEL: And what about prior to that?

WITNESS: Um...you mean like...before they were taken away? Or...

LEGAL COUNSEL: Well just in general, I know there was a period when she didn't visit them a lot but recently and prior to that have you seen them together?

WITNESS: Well I can't remember like prior, but recently.

LEGAL COUNSEL: Okay. Well can you describe what you've seen recently?

WITNESS: Um...When I pick them up they're very anxious to be with Gloria, especially Julian...

LEGAL COUNSEL: Um-huh

WITNESS: and I've seen a lot of interactive with...when's she's been...towards them...

LEGAL COUNSEL: Um-huh.

WITNESS: and talking to them and...and just...I can just see that they miss her.

LEGAL COUNSEL: Um-huh. Ah...when they...when ah...when they first arrive do they greet her?

WITNESS: Um-huh, yes.

LEGAL COUNSEL: How...how do they greet her?

WITNESS: They go to her and hug her and...and say hi and stuff, just make themselves at home.

LEGAL COUNSEL: Um-huh. They seem happy to be with her?

WITNESS: Yes.

LEGAL COUNSEL: Okay. And then what kind of things does she do with them while their there?

WITNESS: Well I know the first time they went to ah...ah...fair at Pueblos...Pueblo High School.

LEGAL COUNSEL: Um-huh.

WITNESS And...ah I don't really know exactly because um...the times I have gone to pick them up, I just go in and say hi and then leave. I don't stay with them there.

LEGAL COUNSEL: Okay.

WITNESS: I know that she does keeps them...she does keep them busy.

LEGAL COUNSEL: Okay. And then are you there picking them up at the end of visits?

WITNESS: Yes.

LEGAL COUNSEL: Okay, and can describe for me their interactions at that time?

WITNESS: Um...they just kissed everybody, some say I love you and see you next Saturday and you know, that's about it.

LEGAL COUNSEL: Okay. Have you ever seen ah...ah...Gloria discipline Linda and Julian?

WITNESS: No.

LEGAL COUNSEL: Okay. Now you know that ah...Gloria's had some problems in the past with drug use?

WITNESS: Yes.

LEGAL COUNSEL: Okay. As far as you know is she ah...clean and sober now?

WITNESS: Yes.

LEGAL COUNSEL: Okay. I don't have any other questions, your honor.

JUDGE: Mr. Galaz, would you like to have any questions of this witness?

RESPONDENT: Um...yes.

JUDGE: Her testimony? The opportunity to ask...

RESPONDENT: Were...were you or was Gloria Court ordered to pick up the kids?

WITNESS: Ah...I don't remember.

RESPONDENT: You were at the last court weren't you?

WITNESS: Yes.

RESPONDENT: Um...could you ask the judge? (pause) I mean he ordered it. (pause) I mean there was...she was suppose to pick up the kids right? There was no....there was no (cleared throat) Vicky

Bustamante pick up the kids and drop them off, it was Gloria Bustamante pick up the kids and drop them off (sniffle) I'm I correct?

WITNESS: I guess, I don't remember ah...

RESPONDENT: I mean....

WITNESS: I don't remember yesterday.

RESPONDENT: we're you or were you not at the last court?

WITNESS: Yes.

RESPONDENT: Okay, you should know because it was ordered by the judge. (cleared throat) So obviously this is Gloria Bustamante was ordered to pick up the kids and drop them off not Vicky Bustamante, (pause) I'm I correct?

WITNESS: I think so.

UNKNOWN: (inaudible)

WITNESS: I don't know.

RESPONDENT: I'm asking you the question

WITNESS: I don't know, I don't remember ah...I don't even remember yesterday, I...I don't remember.

RESPONDENT: Hmm...that's all I got to say.

JUDGE: Do you have any questions?

LEGAL COUNSEL: No, I don't have any other questions.

JUDGE: Your excused. Any other witnesses?

LEGAL COUNSEL: Ah...yes your honor, Gloria Bustamante.
(pause)
Could you state your name for the record please?

PETITIONER: Gloria Bustamante.

LEGAL COUNSEL: And ah...Ms. Bustamante, what is your address?

PETITIONER: 3511 S. 12th Avenue, apartment 1103.

LEGAL COUNSEL: Okay, ah...and that's in Tucson?

PETITIONER: Yes.

LEGAL COUNSEL: And do you...are you employed?

PETITIONER: No.

LEGAL COUNSEL: Okay. Ah...why not?

PETITIONER: Cause I used to volunteer ...(inaudible)

LEGAL COUNSEL: Okay, now Linda Galaz and Julian Bustamante are your children is that right?

PETITIONER: Yeah.

LEGAL COUNSEL: Okay, and they are enrolled members of the Pascua Yaqui Tribe?

PETITIONER: Yeah.

LEGAL COUNSEL: Okay, and they live....right now they live here on the reservation is that right?

PETITIONER: Yeah.

LEGAL COUNSEL: Okay. And Alex...ah Galaz Senior is their father?

PETITIONER: Yeah.

LEGAL COUNSEL: Okay. He has custody of them right now through a CPS court action?

PETITIONER: Yeah, yes.

LEGAL COUNSEL: Okay. But CPS has closed the file on Linda and Julian is that right?

PETITIONER: Yeah.

LEGAL COUNSEL: There is an open file on your older daughter Brianna?

PETITIONER: Yeah, there is.

LEGAL COUNSEL: Okay. (pause) Ms. Bustamante you've been seeing the...the children for visits since the last time we were in court?

PETITIONER: Yeah, after.

LEGAL COUNSEL: Okay. And how...how have those visits been going?

PETITIONER: Very good, very happy to be there with me. They just kind of make they're selves at home and go to the refrigerator, eat whatever and just watch T.V. We just talk about (inaudible) and stuff. They're very happy, they always make themselves at home all the time.

LEGAL COUNSEL: And do you...have you gone out and done things while they're visiting you?

PETITIONER: Yeah, we went to the ah...Pueblo's street fair....

LEGAL COUNSEL: Um-huh.

PETITIONER: um...and then we went out to eat, I know we brought some food home we ate there, we went to the store, we went to my sisters house cause she was having prayer meetings there...they have prayer meetings there and we went last Saturday. Um...just...and then we just stay home and just talk and watch t.v. (inaudible) it's really good they...they just like to be there, sometimes they get bored cause they want more but you know...I tell them, you know I don't have the (inaudible) so we could do more things. I wish we can but we can't and then I don't have a car so...you know but...

LEGAL COUNSEL: Okay. You mentioned you didn't have a car is that why your...your sister was doing the transporting of the children?

PETITIONER: Yes.

LEGAL COUNSEL: Okay. And did...did your older son Alex....

PETITIONER: Yeah, my....

LEGAL COUNSEL: provide transportation....

PETITIONER: Yeah my son....

LEGAL COUNSEL: one weekend?

PETITIONER: Alex did it one weekend, I asked Rosie (inaudible) if it was okay and she said yes...

LEGAL COUNSEL: Um-huh.

PETITIONER: Um...and then I asked my sis...my sister if she could do that for me and she said yes also, so that's why we were doing it that way.

LEGAL COUNSEL: Okay, um...now th...these visits for the most part they took place in...at your home?

PETITIONER: Um...yes.

LEGAL COUNSEL: Okay. You live in an apartment or house?

PETITIONER: In an apartment. Eight...there's eight apartments there.

LEGAL COUNSEL: Okay. And can you describe the...the apartment?

PETITIONER: Um...I have a two bedroom...

LEGAL COUNSEL: Um-huh.

PETITIONER: Um...and the living room and one bathroom, and the kitchen and there's a laundry room with washers and dryers and to hang your clothes.

LEGAL COUNSEL: Okay.

PETITIONER: Um...it's really quiet, it's a really quiet neighborhood.

LEGAL COUNSEL: Does anyone live there with you?

PETITIONER: Just my two sons, um...Oscar and...Juan.

LEGAL COUNSEL: Okay. And when ah...Linda and Julian were visiting you, were...were Oscar and Juan also there?

PETITIONER: Yes.

LEGAL COUNSEL: Okay. And have they sen...seen Linda and Julian before those visits?

PETITIONER: Yes.

LEGAL COUNSEL: Okay. How...do they interact at all or...they're to much of an age difference?

PETITIONER: Well, the...my little boy does...he...he's two years old and he likes to like get into you know...play with Julian and...

LEGAL COUNSEL: Um-huh.

PETITIONER: Julian plays with him too, but then Julian fights with him too and I have to tell him you know... he's to little, don't be fighting with a little boy (chuckle)

LEGAL COUNSEL: Ah-huh.

PETITIONER: but other then that they're little kids so...so I just have to tell them not to be fighting though, they could lose their temper to fight, to fight.

LEGAL COUNSEL: Ah...now you said they're fighting, is that kind of normal brother-sister, brother-brother fighting or is it something more then that?

PETITIONER: No, it's just brother and...brother to brother fighting, you know...little kids fighting.

LEGAL COUNSEL: Okay, are they hurting each other at all?

PETITIONER: No.

LEGAL COUNSEL: Okay.

And ah...before the...the visits that the...the judge ordered, ah... were you having regular visits with ah...Linda and Julian?

PETITIONER: Well, I was at one time....

LEGAL COUNSEL: Ah-huh.

PETITIONER but...and then they stopped coming.

LEGAL COUNSEL: Okay, and when did they stop visiting?

PETITIONER: I believe in January.

LEGAL COUNSEL: So did you have any contact with them from January through...when the temporary visits started?

PETITIONER: Well a couple of times they came to see (inaudible) Helen. When there in school both of them and they're just telling me that... what's going on in their household so um...that's about it. That's why....

JUDGE: Excuse me, am sorry for the interruption, I apologize. Is there someone from detention being brought in?

UNKNOWN: (inaudible)

JUDGE: So you sent him back?

UNKNOWN: (inaudible)

JUDGE: Okay. We can go ahead and proceed with the hearing, excuse me. I'm sorry about that.

LEGAL COUNSEL: That's okay.
(pause)
Okay, Um...I kind of lost my place here...okay, um...Ms. Bustamante ah...now you and Alex Galaz have both had some problems with drugs and alcohol in the past, is that right?

PETITIONER: Yes.

LEGAL COUNSEL: Okay, the fact is that one of the reasons CPS got involved with your kids?

PETITIONER: Yes.

LEGAL COUNSEL: And are you clean and sober now?

PETITIONER: Yes.

LEGAL COUNSEL: Okay. Do you feel that you can take care of Linda and Julian?

PETITIONER: Yes.

LEGAL COUNSEL: Alright. Do you have any concerns that Alex might be using drugs or alcohol?

PETITIONER: Well, just that my...my son told me that the past weekend, he said that he was drinking alcohol and for me not to tell anybody which is...do not say anything because he's scared and if he um...if he ...if they...if he um...if um...if they know that he told me that you

know...that he was scared...he's scared um...he all the time that he um...had told on him for something and...he said that they threw his clothes away and...and...and he was afraid to be telling me that because they throw his clothes away.

LEGAL COUNSEL: Okay, have there been times in the past when Alex Galaz was clean? When he wasn't using drugs or alcohol?

PETITIONER: Yes.

LEGAL COUNSEL: Okay. Now when we filed this court act...when we filed this court action in May, did you have some concerns then about ah...drug use by Mr. Galaz?

PETITIONER: (cleared throat)...yes I did.

LEGAL COUNSEL: Okay, why?

PETITIONER: Because of my kids were telling...just...just because my kids were telling (pause) um...(long pause).....

LEGAL COUNSEL: Okay, alright. I'm sorry go ahead do....

PETITIONER: Just that my kids were telling me um...that he was drinking and smoking weed and doing cocaine and doing crack cocaine and...they stole crack cocaine from him and they sold it and got fifty dollars from it.

LEGAL COUNSEL: Okay....

PETITIONER: Um.....

LEGAL COUNSEL: You don't have any actual knowledge, you haven't seen him use drugs?

PETITIONER: No.

LEGAL COUNSEL: And...and the recent....

PETITIONER: Just...just in January when he would drop off my kids, he would be drunk. I mean I would see him with a beer and he would smell like alcohol, I mean he would be....

LEGAL COUNSEL: Okay let me stop you for a minute. This was January of 2004?

PETITIONER: Um-huh, yes.

LEGAL COUNSEL: Okay, do you remember what day in January?

PETITIONER: It was just...probably like the middle of January.

LEGAL COUNSEL: And what...it was during a visitation exchange?

PETITIONER: Yes.

LEGAL COUNSEL: And what did you observe?

PETITIONER: That he was drunk, driving with my kids.

LEGAL COUNSEL: How do you know he was drunk?

PETITIONER: Because after I seen him with a beer in his hand, and he also threw atwelve pack of beer on the side right there...

LEGAL COUNSEL: Um-huh.

PETITIONER: um...and he...he'd be smoking weed and...

LEGAL COUNSEL: How do you know he was smoking weed?

PETITIONER: Because I seen him rolling it and smoking it.

LEGAL COUNSEL: Was that the same time?

PETITIONER: Yeah, it would be all the time my...my kids would come (inaudible).

LEGAL COUNSEL: How many times....

PETITIONER: It was a couple...

LEGAL COUNSEL: total?

PETITIONER: of weekends.

LEGAL COUNSEL: A couple of weekends in January.

PETITIONER: Yeah.

LEGAL COUNSEL: Okay. Ah...do you know what the ah....the ah...living situation with the ch...with ah...Linda and Julian is now? Do you know where Linda is living?

PETITIONER: Linda lives with Rosie Hickman and ah...

LEGAL COUNSEL: Okay.

PETITIONER: Julian...

LEGAL COUNSEL: And who is she? Who's Rosie Hickman?

PETITIONER: She's her cousin, her cousin's...

LEGAL COUNSEL: Do you know how long she's been living with Rosie?

PETITIONER: Um...I think it's been going on two months?

LEGAL COUNSEL: Do you know why she's living with Rosie?

PETITIONER: Because she doesn't want to live with her dad. She told me she doesn't like her step-mom.

LEGAL COUNSEL: That's...

PETITIONER: They don't get along with each other and that's why she doesn't want to be there, and I don't know what else...you know...what else is going on there, but this is what she tells me.

LEGAL COUNSEL: And is Alex living...excuse me, is Julian living with Alex Galaz?

PETITIONER: Yeah.

LEGAL COUNSEL: Okay. (pause) Do you have any concerns about ah... the ah... living conditions at Alex Galaz's house?

PETITIONER: Well I use...I did before because my kids would come and tell me all kinds of stuff that their house was always dirty and they never had food. And so when they used to come to my house they used to be so hungry, they used to eat all day long and...and they never wanted to go home because they never...one time I remember they did not have like...they turned their electricity off or their gas and they were cooking their food on the burner on one of those electric burners and...my kids were just very disappointed because of that they had to do that for like a month or something like that they told me.

LEGAL COUNSEL: Did you ah...ever see either of the children...strike that. Ah...prior to the visits ending in January did you ever see anything

about Julians appearance that gave you concern about the living conditions at Alex's house?

PETITIONER: Can you repeat that, I didn't understand that question?

LEGAL COUNSEL: Before the visitation stopped in...in January, was there anything about Julian's concern...a...appearance when he would come to you for visitation, that would concern you?

PETITIONER: Just that he...he always came with torn clothes or torn shirts...

LEGAL COUNSEL: Um-huh.

PETITIONER: and just recent um...this was like two weekends he came...he came and he did not have no underwear, and I go "where's your underwear at, where's...what's up with this?" I mean...and he like "I don't have any," he tells me.

LEGAL COUNSEL: Um-huh.

PETITIONER: "What do you mean, you don't have any." And then he came with torn socks like last weekend, he just tore...his socks were all torn, and so I gave him a pair of my socks. Um...but I...I mean, it seems like every time he keeps coming he has torn something, torn sho...shirt, or socks or he doesn't have underwear um...and I...that's really bad I don't want my kids to be like that all the time when they come to my house. Um...but I...I mean he also wanted me to...he also last weekend asked me if I could buy him shoes or socks orrr...what else did he say...or underwear he tells me...

LEGAL COUNSEL: Um-huh.

PETITIONER: but...but I told him that I don't know, I'll see cause I have to get money orders first and if I have enough I'll buy him shoes, but I didn't, I barely had enough to buy him socks...I mean I feel bad because I couldn't buy him any shoes and he really wanted shoes but um...I...I had to pay my bills first.

LEGAL COUNSEL: Okay.

PETITIONER: Ah...

LEGAL COUNSEL: Um...do you know if...if CPS here, the tribal CPS office has ah...been involved with Julian and Linda recently?

PETITIONER: Yeah.

LEGAL COUNSEL: What do you know?

PETITIONER: Well, my daughter and son had went to CPS ah...told them you know...their situation at their house.

LEGAL COUNSEL: Do...do you know when this was?

PETITIONER: I believe this was in April.

LEGAL COUNSEL: Of...of this year?

PETITIONER: April or May, I'm....

LEGAL COUNSEL: Of two thousand four.

PETITIONER: Yes.

LEGAL COUNSEL: Okay.

PETITIONER: But they did not believe my daughter so...they dropped it and I guess they went to the house. My daughter, I don't know...she's always telling me like stuff that, when they knew that they were gonna come, they'd make sure that the house was clean all the time, when they make...and they knew that CPS was gonna come or something like that, my daughter used to tell me that...you know... to make sure that everything was put away and everything was so...

LEGAL COUNSEL: Do you know if CPS is involved at all with Linda and Julian now?

PETITIONER: No, not that I know of.

LEGAL COUNSEL: Are they appro....is CPS providing any services to...to the family?

PETITIONER: Um...I think so. I think they're involved with CPS right now.

LEGAL COUNSEL: Okay, I thought you just said they...they weren't?

PETITIONER: Well...with Linda and Julian I don't think with them two but with the other kids yes, they have other two kids.

LEGAL COUNSEL: Okay. Um...Ms. Bustamante ii...your asking the court to...to place Linda and Julian with you, so they would live with you...

PETITIONER: Yes.

LEGAL COUNSEL: Okay, and you...you've mentioned one issue that...that might create a problem is money. How...how would you overcome that, if the children came to live with you?

PETITIONER: Well, there's a lot of help out there um... and...you know, right now we could do it, you know...right now together with each other we could do it together it's...it's not really a problem, just as long as I get my bills paid and stuff um...the other stuff could come all the time like the materials that could always come, you know...I...for my family I'll need help for my family you know...for the mean time till...you know I get money...money for my both kids you know. Um....

LEGAL COUNSEL: Ah...you mentioned that you're in a two bedroom apartment, do you think that would be a problem if you had your self and four children living in a...in a apartment that size?

PETITIONER: No, because my two boys sleep...my...I have a room and my...I sleep in my own bed my son sleeps in his own bed, my other son sleeps in is own bed and I have an other bed in the other room so...

LEGAL COUNSEL: Okay, you also mentioned that a...there'd been times when Linda and Julian came over for visitation and they were bored do....

PETITIONER Well yeah, cause they...they're.....

LEGAL COUNSEL: do you think that would be a problem if they were living with you full time?

PETITIONER: No because I'll make them do things sho....stuff...you know...we'll do something together as a family.

LEGAL COUNSEL: Um-huh.

PETITIONER: Um...they're just bored because they're used to like going places and they're not like always home they're always running around back and forth and you know they think that that's the way to live to just be going...like Julian he just wants to be like always running around all over the place.

LEGAL COUNSEL: Um-huh.

PETITIOENR: Um and that's not going to happen if he lives with me because he's not gonna be...I'm not gonna let him just do what he wants to do, because he just wants to...like here he lives in Pascua and he runs all over the place with his friends and stuff...

LEGAL COUNSEL: Um-huh.

PETITIONER: and stays up...stays late you know...I don't know how late, but....

LEGAL COUNSEL: Well what...let me stop you for a minute. What's wrong with running around with his friends?

PETITIONER: Well that's not the problem but I mean...there's a..there's time limits for that, you know like he needs to... you know...there's certain times that he could do it and sometimes no you know...cause somethings...he has to do at home and you know that's...and especially like schools coming you know, he's gonna have to really be focused on his...on his school, his homework and coming home, I mean I'm...you know I'll teach him how to wash his clothes and dry his clothes and stuff you know...

LEGAL COUNSEL: Taking everything into consideration do you think the kids, Julian and Linda would be better off living with you or with their father Alex?

PETITIONER: With me, because I think right now they really need their mom, they need um....they need their mom, I mean...every...every kid needs their mom. Um...

LEGAL COUNSEL: Don't they also need their father?

PETITIONER: Yeah they do. But um...when the stepmother does not like the kids and that's a big problem for the kids. Um...and my kids are like you know... they're like...they want their dad, but then I guess he's to focused on his wife and his other two kids and my kids like just...they just think that he just like abandoned them or...you know and my kids just think somebody should be there for them everyday and take care of them everyday and have breakfast, lunch and dinner there for them all the time.

LEGAL COUNSEL: Thank you. I don't have any other questions.

JUDGE: Any questions Mr. Galaz?

RESPONDENT: Where were...were you or were you not court ordered to be personally pick up the kids and drop them off?

PETITIONER: Yeah, but I...we (inaudible) talked about it and um...we made arrangements for my sister to....

RESPONDENT: That was not...that was not court ordered, that was you....

LEGAL COUNSEL: I'll object....

RESPONDENT: your res...your responsibility....

LEGAL COUNSEL: object he's arguing with the witness.

RESPONDENT: thats...that was your res....

JUDGE: Let's keep this to question and answer. I'll give you an opportunity to testify ah...with your opinion on that and in the meantime if you have any questions you'd like to ask this is...

RESPONDENT: We're you....

JUDGE this is cross.

RESPONDENT: could...yeah, could you answer the question Gloria?

PETITIONER: Ah...no.

RESPONDENT: No? You weren't ordered to pick up the kids?

PETITIONER: Oh me? Yeah, I was. But...but we made other arrangements so...because of my transportation so...

RESPONDENT: Was that through....

PETITIONER: everybody talked together....

RESPONDENT: excuse me. Was that through the courts?

PETITIONER: No.

RESPONDENT: Okay.

PETITIONER: Yeah, it was (inaudible) request that (inaudible) what was going on.

RESPONDENT: (cleared throat) Okay. You claimed that um...Julian he would go to your house with torn clothes when ah he...this past few visits has he came home with some of the clothes that I have provided for him that he...he has not brought home?

PETITIONER: Just the shorts, my goodness...

RESPONDENT: Suits...

PETITIONER: he was just talking about the sh....

RESPONDENT: suits?

PETITIONER: What suits? Good god, I don't know what are you talking about. It was just one pair of shorts.

RESPONDENT: What color were they?

PETITIONER: White shorts that he was...

RESPONDENT: Do you remember....

PETITIONER: my son was so.....

RESPONDENT: what color they were?

PETITIONER: They're white. I don't....

RESPONDENT: No they weren't, they were gray and orange.

LEGAL COUNSEL: Objection, argumentative.

JUDGE: I'll sustain the objection. Let's keep this to question and answer rather than responding to proffered answers. I'll give you a chance to testify but no argumentations so...

RESPONDENT: Ah....

JUDGE: I'll sustain the objection.

RESPONDENT: You claim that the kids were going...they would go visit you and they were starving and were hungry (cough)...would um... would you feed them when they were visiting you?

PETITIONER: Yes, I would be there.

RESPONDENT: I mean...ob...obviously you weren't because they come...he comes home and

LEGAL COUNSEL: Objection, argumentative.

RESPONDENT: (SNORT)

JUDGE: Sustained.

RESPONDENT: (SNORT)

JUDGE: Rather than responding to what you're saying....

RESPONDENT: (cough)

JUDGE: keep it to question and answer.

RESPONDENT: So, excuse me um....so how do you plan to provide for these kids?
Is that...would that be more family assistance on your behalf?
How do you plan to provide for these kids?

PETITIONER: I don't know yet. It hasn't happened yet so...I mean that's another
step I have to enter I mean so....when they help you they'll tell you
but right now I don't know.

RESPONDENT: (COUGH) In the past how many times have you tried and failed to
get custody of these kids?

PETITIONER: Um...

RESPONDENT: How many times did you get custody and lose it because you...

PETITIONER: I only got....

RESPONDENT: choose it over drugs or...

PETITIONER: one time...

RESPONDENT: your so called whatever?

PETITIONER: one time.

RESPONDENT: (SNORT)

PETITIONER: But I'm better now...

RESPONDENT: Did you....

PETITIONER: and I'm clean.

RESPONDENT: did you or did you not have a house for them by the tribe?

PETITIONER: Yeah, but I made a mistake. Everybody makes mistakes, everybody makes wrong choices and I made a wrong choice that day so...I'm back up on my feet and...

RESPONDENT: (COUGH)

PETITIONER: I'm starting over and I'm doing very good now.

RESPONDENT: In the past three years how many times have you visit them? And what have you provided for them?

PETITIONER: My...my love and just being there with them. My house, they're very comfortable when they go to my house. Happy...it's happy...it's really...it's really... well being there with them it's (inaudible) that material stuff. I can't provide that stuff for them because...that's why you're there you're their dad. You...you never provided nothing before when they were little so...I mean.. now it's your turn, you wanted to take of these kids you...that's where they gave you custody for you could take care of them....

RESPONDENT: Exactly...

PETITIONER: and...and ok well....

RESPONDENT: exactly, I...

PETITIONER: you never did that for them...

RESPONDENT: I...I...I...look at what I went through and look at where I am now. Who are the kids placed with now?

PETITIONER: With you?

RESPONDENT: Who complied with C.P.S. for three years? (pause) and who had that chance, did you or did you not?

PETITIONER: Yeah I did, but I'm still fighting though, I'm not gonna give up. I'm a start here, that's why I'm here today. That was the past...

RESPONDENT: Are you or...

PETITIONER: that was the past...

RESPONDENT; are you not looking for an easy way out because I've complied and I did what I had to do for these kids to get them back...

PETITIONER: No I'm not...

RESPONDENT: when you had the same chance?

PETITIONER: No, cause they're my kids, I need to do this for my kids and myself.

RESPONDENT: I don't have any more questions your honor.

JUDGE: Any questions?

LEGAL COUNSEL: No questions your honor.

JUDGE: Okay, your excused Ms. Bustamante. Any other witnesses?

LEGAL COUNSEL: No your honor.

JUDGE: Okay, Mr. Galaz, you'll have an opportunity now to present your response to this motion, if you'd like to testify on your own behalf? Any witnesses you'd like to call?

RESPONDENT: No.

JUDGE: Okay. And what is your response Mr. Galaz?

RESPONDENT: I just...I ma leave it up to you your honor, to make the decision for these kids. If it's...if it's obviously all these accusations that are made towards me were true, CPS would've taken these kids from me along time in a heartbeat.

JUDGE: What I'm gonna do is permit each side to submit ah...compliance of fact conclusions of law as to how the court should proceed. Now what that means is that you can provide... you can ah...type it up if you wish to do so or write it out ah...what findings I should have, which means what facts I should consider in making my decision. And so I would give up thru Monday at 3 p.m. for both sides if they wish to do so, again this is...this is something you can do or can't do this is voluntarily ah...just submit findings of facts to the court. Basically what that is, is testimony here presented in court and the facts that I should consider and then my final decision. What I'm going to do is consider the children's interview in chambers, so what I'll be doing is excluding all parties and all the witnesses. I'll be calling the children in one at a time and the order in which I'm going to call them is the older child first and the younger child second. At that point I'm going to take the testimony and were going to seal that record and based on the

testimony of those children that the court will consider and then the review of the finding of facts to be submitted to the court by both parties I'll then make my...my decision. Hopefully I can do that by next Tuesday. But what I'll do is give by Monday, that's the 16th and if you can submit that by 3:00 p.m. on the 16th then the court will then review those on that Monday afternoon....

RESPONDENT: So in other words...what...what....

JUDGE: and make some decision by...by the end of Tuesday afternoon.

RESPONDENT: What...what are you asking for your honor? I'm sorry....

JUDGE: These are findings of facts....

RESPONDENT: I got a head cold.

JUDGE: conclusions of law. I know your not an attorney but it's just for you to submit in writing what you feel was presented here today through your testimony and through all the testimony of all the witnesses what facts I should consider, what facts were in evidence and what that means is people who testified here have said certain statements which one of those statements I should consider what weight I should give to it and ah...how I should decide the case ultimately. So I'll permit each side to submit their recommendations to the court.

LEGAL COUNSEL: Ah your honor?

JUDGE: Yes.

LEGAL COUNSEL: Could I ask a clarifying question?

JUDGE: Sure.

LEGAL COUNSEL: You want that more in a form of like ah...writ in closing argument or just proposed findings that you would then just sign off on if the date you agreed with him?

JUDGE: Yeah, yeah. I would basically look at that and reflect on my notes, and reflect on the record and see if their consistent and then I would do findings and ah... then make a decision. Conclusion of law basically is who the...who gets custody, who gets visitation, who gets contact, and what arrangements are in the best interest of those children ok.

Okay what I will then do, if there's no other evidence or no other testimony to be presented, if neither side has any we'll go ahead and exclude the parties and the attorney's and all the witnesses and I'll call in the children one at a time. I'll go first with a Linda. So go ahead and ah...go to a separate tape, we'll do a separate sealed tape.