

## TABLE OF CONTENTS

I. STATEMENT OF ISSUES .....	1
II. STATEMENT OF THE CASE .....	1
III. ARGUMENT AND ANALYSIS.....	4
A. State court contempt proceedings imposed on a parent for violation of a judicial child support order do not violate either the Thirteenth Amendment or the Atipeonage Act, 18 U.S.C. §1581 and 42 U.S.C.§ 1994 .....	4
B. The District Court correctly abstained from enjoining he state court’s contempt proceedings pursuant to the abstention doctrine .....	11
C. Appellant’s claim was barred by the doctrine of <i>re judicata</i> or issue preclusion.....	13
IV.CONCLUSION.....	16

## TABLE OF CASES

### FEDERAL

<u>Blonder-Tongue Laboratories v. University of Illinois</u> , 402 U.S. 313, 91 S.Ct. 1434, 28 L.Ed.2d 788 (1971) .....	14
<u>Butler v. Perry</u> , 240 U.S. 328, 332, 36 S.Ct. 258, 259, 60 L.Ed. 672 (1916) .....	6,7
<u>Clark v. Hass Group, Inc.</u> , 953 F.2d 1235, 1237 (9 <sup>th</sup> Cir. 1992) .....	13, 14
<u>Dubinka v. Judges of Superior Court</u> , 23 F.3d 218, 223 (9 <sup>th</sup> Cir. 1994) .	12
<u>Hicks v. Feiock</u> , 485 US 624, 6387 (1987) .....	16
<u>Hurtado v. United States</u> , 410 U.S. 578, 589, n. 11, 93 S.Ct. 1157, 1164, n.1, 35 L.Ed.2d 508 (1973) .....	7
<u>Immediato v. Rye Neck School Dist.</u> , 73 F.3d 454, 459 (2 <sup>nd</sup> Cir. 1996)10,11	
<u>Knight v. Knight, et al.</u> , Cause No. CV-91-949Z .....	2,9,15
<u>Knight v. Knight, et al.</u> , Cause No. CV-92-01659-BJR .....	2
<u>Knight v. Knight</u> , 996 F.2d 1125, 1993 WL 210667 (9 <sup>th</sup> Cir. 1993) ( <i>Unpublished Opinion</i> ) .....	2,4,9,15,16
<u>Knight v. Knight</u> , 33 F.3d 58, 1994 WL 417416 (9 <sup>th</sup> Cir. 1994) ( <i>Unpublished Opinion</i> ). .....	2
<u>Middlesex County Ethics Committee v. Garden State Bar Ass'n</u> , 457 U.S. 423, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982). .....	12
<u>Montana v. United States</u> , 440 U.S. 147, 153-54, 99 S.Ct. 970, 59 L.ed2d 210 (1979) .....	15
<u>Penzoil v. Texaco, Inc.</u> , 481 U.S. 1, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987)12	
<u>Pollack v. Williams</u> , 322 U.S. 4, 64 S.Ct. 792, 88 L.Ed. 1095 (1944).6,10	
<u>Robertson v. Baldwin</u> , 165 U.S. 275, 282, 17 S.Ct. 326, 329, 41 L.Ed. 715 (1897) .....	6
<u>Selective Draft Law Cases</u> , 245 U.S. 366, 390, 38 S.Ct. 159, 165, 62 L.Ed. 349 (1918) .....	
<u>Slaughter-House Cases</u> , 83 U.S. (16 Wall.) 36, 69, 21 L.Ed. 394 (1873). 6	
<u>Smith v. City of Chicago</u> , 820 F.2d 916, 918 (7 <sup>th</sup> Cir. 1987) .....	14
<u>United States v. Ballek</u> , 170 F.3d 871, 874 (9 <sup>th</sup> Cir. 1999) .....	6,7
<u>United States v. Kozminski</u> , 487 U.S. 931, 643, 108 S.Ct. 2751, 2759-60, 101 L.Ed.2d 788 (1988) .....	6,7

<u>United States v. Reynolds</u> , 35 S.Ct. 86, 235 U.S. 133, 59 L.Ed. 162 (1914) .....	10
<u>Western Systems, Inc. v. Ulloa</u> , 958 F.2d 864, 871, <i>cert. denied</i> , 113 S.Ct. 970 (1993).....	14
<u>Whitner v. Davis</u> , 410 F.2d 24 (9 <sup>th</sup> Cir. 1969).....	10
<u>Younger v. Harris</u> , 401 U.S. 37, 91 S.Ct. 74, 37 L.Ed.2d 669 (1971)...	11

## STATE

<u>Bernard v. Bank of America</u> , 19 Cal.2d 807, 122 P.2d 892 (1942) .....	14
<u>Commonwealth v. Pouliot</u> , 292 Mss. 229, 231, 198 N.E. 256, 257 (1935)5	
<u>Freeman v. Freeman</u> , 397 A.2d 554, 557, fn. 2 (D.C. 1979).....	5
<u>Israel v. Wood Dolson Co.</u> , 1 N.Y.2d 116, 119, 134 N.E.2d 97, 99, 151 N.Y.S.2d 1, 4 (1956).....	14
<u>McKenna v. Steen</u> , 422 So.2d 615, 618 (La.Ct.App. 1982).....	5
<u>Moss v. The Superior Court of Riverside County</u> , 950 P.2d 59, 17 Cal.4 <sup>th</sup> 396, 409-410, 71 Cal.Rpt.2d 215 (1998).....	7,8,9,10,11
<u>Stanton v. Willson</u> , 3 Day 37 (Conn. 1808) .....	8
<u>State of Washington, ex rel. Royanne M. Schmitz v. Roger William Knight</u> , King County Superior Court Cause No. 90-3-04471-1. ....	1,3,12
<u>Taylor v. Alaska</u> , 710 P.2d 1019 (Alaska Ct.App. 1985).....	9

## TABLE OF LAWS

United States Constitution, Thirteenth Amendment	2,3,4,5,6,7,8,9,10,15,16
18 U.S.C. §1581 .....	4
42 U.S.C. § 1994 .....	2,3,4,9,10,15,16

## TREATISES AND LEARNED ARTICLES

2 James Kent, <i>Commentaries on American Law</i> 161 (Leonard W. Levy, ed., Da Capo Press 1971) (1827).....	8
Donna Schuele, <i>Origins and Development of the Law of Parental Child Support</i> , 27 J. Fam. L. 807, 811 (1988-1989) .....	8

Frances W. H. Kuchler, <i>Law of Support</i> 34 (3d ed. 1980).....	8
Antieau & Rich, <i>Modern Constitutional Law 2<sup>nd</sup> Ed.</i> , §31.01 (1997) .....	10
RCW 26.18 .....	2,3,15,16
RCW 26.19 .....	2,3,16

## **I. STATEMENT OF ISSUES**

- (1) Should Appellant's claims against Appellees Norm Maleng and Calvin Rapada be dismissed because state court contempt proceedings imposed on a parent for violation of a judicial child support order do not violate either the Thirteenth Amendment or the Antipeonage Act, 18 U.S.C. §1581 and 42 U.S.C. § 1994?
- (2) Should Appellant's claims against Appellees Norm Maleng and Calvin Rapada be dismissed under the Younger absention doctrine?
- (3) Should Appellant's claims against Appellees Norm Maleng and Calvin Rapada be dismissed because of the doctrines of res judicata, claim preclusion and collateral estoppel?

## **II. STATEMENT OF THE CASE**

On July 11, 1991, a decree of dissolution was entered for State of Washington, ex rel. Royanne M. Schmitz v. Roger William Knight, King County Superior Court Cause No. 90-3-04471-1. The decree ordered that Roger W. Knight ("Appellant") pay \$851.76 per month in child support for his children Matthew Alexander Knight and Axel Taylor Knight. After that decree was entered, Appellant, brought a 42 U.S.C. § 1983 against his ex-wife and Assistant Attorney General Kathryn L. Kafka (representing the Washington State

Department of Social and Health Services) in the United States District Court for the Western District of Washington. Roger W. Knight v. Royanne M. Knight, et al., Cause No. CV-91-949Z ("Knight I"). In that action, the plaintiff alleged that the Washington child support statutes, RCW 26.18 and 26.19, violate the Constitution and the federal Anti-Peonage Statute, 42 U.S.C. §1994. The plaintiff also sought injunctive relief against the Assistant Attorney General to prevent enforcement of the Acts and monetary damages from his ex-wife. The district court granted summary judgment for the defendants. On appeal to the United States Court of Appeals, the Ninth Circuit affirmed the summary judgment. Knight v. Knight, 996 F.2d 1125, 1993 WL 210667 (9<sup>th</sup> Cir. 1993) (*Unpublished Opinion*).

Following that judgment, the Appellant filed a second lawsuit in US District Court. Roger W. Knight v. Royanne Knight, et al., Cause No. CV-92-01659-BJR ("Knight II"). In that second action, the Appellant alleged that entry and enforcement of the dissolution decree violated his due process rights. The district court granted the defendants' motion for summary judgment and awarded them sanctions under Rule 11. Once again, upon appeal to the Ninth Circuit, the district court's grant of summary judgment was affirmed. Knight v. Knight, 33 F.3d 58, 1994 WL 417416 (9<sup>th</sup> Cir. 1994) (*Unpublished Opinion*).

As of January 21, 2000, the Appellant owed \$50,624 in unpaid back child support. In accordance with RCW Chapter 26.21, deputy prosecuting attorney Calvin Rapada moved the King County Superior Court for an Order to Show Cause Re Contempt in State of Washington, ex rel. Royanne M. Schmitz v. Roger William Knight, King County Superior Court Cause No. 90-3-04471-1 SEA, See, ER-63. Following receipt of said order, the Appellant filed an action in US District Court. Once again, the Appellant alleged that the enforcement of the dissolution decree pursuant to the Washington child support statutes, RCW 26.18 and 26.19, violate the Constitution and the federal Anti-Peonage Statute, 42 U.S.C. §1994. The Appellant additionally moved for a preliminary injunction prohibiting the King Count Superior Court from holding the contempt hearing.

On March 1, 2000, US Magistrate Judge Ricardo Martinez entered a Report and Recommendation which observed that “[t]his case is but another in a series of attempts by plaintiff to avoid his child support.” See, Magistrate’s Report and Recommendation, ER-12. Although the Appellant objected to the Magistrate’s report, on March 30, 2000 the district court ordered that the Appellant’s motion for a Preliminary Injunction be denied. Meanwhile, the King County Superior Court held the contempt hearing on March 28, 2000. At that hearing, the Appellant stated to the court that “he chooses not pay support.” See,

Order Re Contempt, pg. 2, attached to Fourth Declaration of Roger W. Knight, ER-20. Not surprisingly, the Appellant was found to be in contempt and was order to be confined in the King County Jail pending the payment of bail.

On April 6, 2000, the Appellant moved for summary judgment. Appellee cross-moved for dismissal, Once again, US Magistrate Judge Martinez denied the Appellant's motion, and recommended that the Appellee's motion for dismissal be granted. See, ER-8. On July 7, 2000, US District Court Judge Thomas Zilly entered an order denial the Appellant's motion and dismissing the complaint. This appeal followed.

### **III. ARGUMENT AND ANALYSIS**

- A. State court contempt proceedings imposed on a parent for violation of a judicial child support order do not violate either the Thirteenth Amendment or the Antipeonage Act, 18 U.S.C. §1581 and 42 U.S.C. § 1994

Reduced to its essentials, this entire cause of action is grounded upon the Appellant's untenable assumption - that the state's use of contempt proceedings to enforce child support obligations violates the Thirteenth Amendment and the Anti-Peonage Act. This argument, advanced previously by this very Appellant, has been summarily rejected by this court in one of the Appellant's prior cases. Knight v. Knight, 996 F.2d 1225, 1993 WL 210667 (9<sup>th</sup> Cir. (Wash.)) (*Unpublished Opinion*). Other courts have simply dismissed involuntary

servitude claims made in the context of support-related orders to find employment as meritless without discussion or analysis. See, e.g., Freeman v. Freeman, 397 A.2d 554, 557, fn. 2 (D.C. 1979) (“This contention has no merit.”); McKenna v. Steen, 422 So.2d 615, 618 (La.Ct.App. 1982) (“These allegations are so ludicrous that they hardly dignify a response ... The [order refusing to reduce child support obligation of dentist who left practice] merely imposes ... [the] inherent obligation to support his minor children.... We find no constitutional impingement.”); Commonwealth v. Pouliot, 292 Mss. 229, 231, 198 N.E. 256, 257 (1935) (“Manifestly, it is not slavery or involuntary servitude as thus authoritatively defined to sentence this defendant if he fails to perform his duty to support his family... The statute enforces this duty by appropriate sanctions.”). Although there is little need to further brief this court on this issue, a more expansive discussion of the Thirteenth Amendment and the Anti-Peonage Act might encourage the Appellant to comply with his child support obligation.

The Thirteenth Amendment to the United States Constitution, passed in 1865, declares that:

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

The primary purpose of the Amendment was to abolish the institution of African slavery as it had existed in the United States at the time of the Civil War, but the Amendment was no limited to that purpose: the phrase “involuntary servitude” was intended to extend “to cover those forms of compulsory labor akin to African slavery which in practical operation would tend to produce like undesirable results.” United States v. Kozminski, 487 U.S. 931, 643, 108 S.Ct. 2751, 2759-60, 101 L.Ed.2d 788 (1988), citing Butler v. Perry, 240 U.S. 328, 332, 36 S.Ct. 258, 259, 60 L.Ed. 672 (1916). See also, Robertson v. Baldwin, 165 U.S. 275, 282, 17 S.Ct. 326, 329, 41 L.Ed. 715 (1897); Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 69, 21 L.Ed. 394 (1873).

Imprisoning someone for failure to pay a debt can run afoul of the Thirteenth Amendment. See, e.g., Pollack v. Williams, 322 U.S. 4, 64 S.Ct. 792, 88 L.Ed. 1095 (1944). However, it is well-established that “not all forced employment is constitutionally prohibited.” United States v. Ballek, 170 F.3d 871, 874 (9<sup>th</sup> Cir. 1999). In its decisions applying the Thirteenth Amendment, the United States Supreme Court has recognized that:

[N]ot all situations in which labor is compelled by physical coercion or force of law violate the Thirteenth Amendment. By its terms the Amendment excludes involuntary servitude as legal punishment for a crime. Similarly, the Court has recognized that the prohibition against involuntary servitude does not prevent the State or Federal Governments from compelling their citizens, by threat of criminal sanction, to perform

certain civic duties.... Moreover,... the Court [has] observed that the Thirteenth Amendment was not intended to apply to "exceptional" cases well established in the common law at the time of the Thirteenth Amendment, such as "the right of parents and guardians to the custody of their minor wards, ... or laws preventing sailors who contracted to work on vessels from deserting their ships.

Kazinski, supra, at 944, 2760 (citations omitted). See also, Hurtado v. United States, 410 U.S. 578, 589, n. 11, 93 S.Ct. 1157, 1164, n.1 , 35 L.Ed.2d 508 (1973) (jury service); Selective Draft Law Cases, 245 U.S. 366, 390, 38 S.Ct. 159, 165, 62 L.Ed. 349 (1918) (military service); Butler v. Perry, 240 U.S. 328, 332-333, 36 S.Ct. 258-259, 60 L.Ed. 672 (1916) (roadwork). The Thirteenth Amendment "certainly was not intended to interdict enforcement of ... duties which individuals owe to the State...." Butler, supra at 333. In a case directly on point, the Ninth recently concluded that "child-support awards fall within that narrow class of obligations that may be enforced without violating the constitutional prohibition against slavery." Ballek, supra, at 874.

The obligation of a parent to support a child, and to become employed if that is necessary to meet the obligation, is in no way comparable or akin to peonage or slavery. It is "among the most fundamental obligations recognized by modern society." Moss v. The Superior Court of Riverside County, 950 P.2d 59, 17 Cal.4<sup>th</sup> 396, 409-410, 71 Cal.Rpt.2d 215 (1998). Long before the Thirteenth Amendment was adopted, the obligation of parents to support their

children has been recognized in the United States. See 2 James Kent, *Commentaries on American Law* 161 (Leonard W. Levy, ed., Da Capo Press 1971) (1827); Stanton v. Willson, 3 Day 37 (Conn. 1808) (non-custodial divorced father responsible for full financial maintenance of children); see also Donna Schuele, *Origins and Development of the Law of Parental Child Support*, 27 J. Fam. L. 807, 811 (1988-1989). In short, it has long been recognized that the obligation of a parent to support a child is “not only a moral obligation, but one that is legally enforceable.” Moss, at 410, citing *Origins and Development of the Law of Parental Support* at 814-815. In holding that the threat of criminal sanctions for failure to pay child support in no way violates the Thirteenth Amendment, this Court recently wrote:

We start with the self-evident observation that the relationship between parent and child is much more than the ordinary relationship between debtor and creditor. The parent is responsible for bringing the child into the world and in so doing assumes a moral obligation to provide the child with the necessities of life, and to ensure the child’s welfare until it is emancipated and able to provide for itself. When parents neglect their children, this raises more than a private legal dispute. It is a matter of vital importance to the community, and every state now enforces, by means of criminal sanctions, the parent’s obligation to support children within his custody.

Ballek, 170 F.3d at 874. See also, Frances W. H. Kuchler, *Law of Support* 34 (3d ed. 1980).

In short, a parent's obligation to support children is one of those duties which individuals owe to the State not interdicted by the Thirteenth Amendment. As this Court observed in Ballek, the supervision and coercive power of the court is often invoked to prompt the non-custodial parent to continue providing support. The non-custodial parent's obligation to pay child support is thus derivative of the obligation to provide support in a custodial setting, and such awards are routinely enforced by imprisonment. Ballek, 170 F.3d at 875. See also, Moss v. Superior Court, 17 Cal.4<sup>th</sup> 396, 71 Cal.Rptr.2d 215, 222, 950 P.2d 59, 66 (1998) (rejecting the argument that imprisonment for failure to work in order to earn enough money to make child support payments violates state and federal prohibitions against slavery); Taylor v. Alaska, 710 P.2d 1019 (Alaska Ct.App. 1985) (affirming conviction of non-custodial parent who without lawful excuse failed to provide support for child).

The Appellant also asserts that 42 U.S.C. §1994, the Anti-Peonage Act, prevents the State of Washington from using contempt proceedings to enforce child support obligations.<sup>1</sup> In nineteenth century New Mexico, a system of service called "peonage" existed. Peonage was not slavery; the peon was not a

---

<sup>1</sup> As noted in the Magistrate's Report, "[t]he argument advanced by the plaintiff here, namely that the state's use of contempt proceedings to enforce child support obligations violates .... the Anti-Peonage Act, 42 U.S.C. §1994, was summarily rejected by the Ninth Circuit Court of Appeals in one of plaintiff's prior cases." See, Magistrate's Report and Recommendation, (referring to Knight v. Knight, C91-949Z, affirmed 996 F.2d 1225 (9<sup>th</sup> Cir. 1993) (*Unpublished Disposition*)).

“slave.” Instead, he entered into the relation for a defined period and by a contractual agreement. Upon accepting money from the employer, the peon became irrevocably bound to serve the master. Antieau & Rich, *Modern Constitutional Law 2<sup>nd</sup> Ed.*, §31.01 (1997). The Anti-Peonage Act, enacted in 1867, implemented the Thirteenth Amendment by striking down all laws and usages in states and territories which attempted to maintain and enforce involuntary service of any person as peon, in liquidation of any debt. See, Pollack v. Williams, 64 S.Ct. 792, 799, 322 U.S. 4, 17, 88 L.Ed. 1095 (1944); U.S. v. Reynolds, 35 S.Ct. 86, 235 U.S. 133, 59 L.Ed. 162 (1914); Whitner v. Davis, 410 F.2d 24 (9<sup>th</sup> Cir. 1969).

For the same reasons that the use of contempt proceedings to enforce child support obligations do not violate the Thirteenth Amendment, those proceedings do not violate the Anti-Peonage Act. As the California Supreme Court recently observed:

Employment chosen by the employee which the employee is free to leave, either in favor of another employer or if the working conditions are objectively intolerable, is imply ‘not akin to peonage. It does not become so because a person would prefer not to work but must do so in order to comply with a legal duty to support the person’s children.

Moss, 17 Cal.4<sup>th</sup> at 415-416. As the Second Circuit Court of Appeals stated in Immediato v. Rye Neck School Dist., 73 F.3d 454, 459 (2<sup>nd</sup> Cir. 1996): “In

application, courts have consistently found the involuntary servitude standard is not so rigorous as to prohibit all forms of labor that one person is compelled to perform for the benefit of another. The Thirteenth Amendment does not bar labor that an individual may, at least in some sense, choose not to perform, even where the consequence of that choice are 'exceedingly bad.'"

In short, no constitutional right is violated by imposing criminal contempt sanctions on a non-custodial parent who without lawful excuse has failed to provide support for his children pursuant to a dissolution decree. Working to earn money to support a child is not involuntary servitude any more than working in order to pay taxes. Failure to either may subject one to civil and criminal penalties, but that compulsion or incentive to labor does not create a condition of involuntary servitude. Moss v. Superior Court, 17 Cal.4<sup>th</sup> at 416. Since no constitutional right is threatened, the district court correctly dismissed this action.

B. The District Court correctly abstained from enjoining the state court's contempt proceedings pursuant to the abstention doctrine

In Younger v. Harris, 401 U.S. 37, 91 S.Ct. 74, 37 L.Ed.2d 669 (1971), the United States Supreme Court held that under principles of federalism and comity, district courts must abstain from enjoining pending state criminal proceedings unless extraordinary circumstances are present. The Court has since extended the scope of the Younger abstention doctrine to prohibit injunctions

against certain state civil and quasi-criminal proceedings that implicate important state interests. See, e.g., Penzoil v. Texaco, Inc., 481 U.S. 1, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987); Middlesex County Ethics Committee v. Garden State Bar Ass'n, 457 U.S. 423, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982).

In general, three requirements must be satisfied before a federal court may properly invoke the abstention doctrine: (1) there must be an ongoing state proceeding; (2) the state proceeding must implicate important state interests; and (3) the plaintiff must have an adequate opportunity in the state proceeding to raise federal questions. Dubinka v. Judges of Superior Court, 23 F.3d 218, 223 (9<sup>th</sup> Cir. 1994).

The District Court correctly abstained from exercising jurisdiction over this cause of action. First, there was an ongoing state proceeding - the Appellant was ordered to appear before the King County Superior Court on March 2, 2000 and show cause why the child support order should not be enforced. State of Washington, ex rel. Royanne M. Schmitz v. Roger William Knight, King County Cause No. 90-3-04471-1 SEA. Allowing the Appellant to proceed with his complaint in federal court would undoubtedly have resulted in a waste of federal resources on a matter that the state court is fully equipped and set to decide. Second, the enforceability of child support orders implicates an important state

interest. United States v. Ballek, 170 F.3d 871, 874-875 (9<sup>th</sup> Cir. 1999). Third, Appellant had an adequate opportunity to raise his constitutional challenges in the state proceeding.

Finally, the interests of federal-state comity was served by abstaining from the exercise of jurisdiction. For the federal courts to assert jurisdiction over Appellant's claims would have caused needless friction between the state and federal court by creating the risk that each court might reach different conclusions when interpreting the child support order. Accordingly, the tenets of the abstention doctrine required the District Court to abstain from reviewing plaintiff's claims.

C. Appellant's claim was barred by the doctrine of *res judicata* or issue preclusion.

Although the Report and Recommendation by US Magistrate Judge Martinez did not refer to the argument, Appellant's complaint against King County defendants is barred by the doctrine of *res judicata* or issue preclusion. "Under the doctrine of *res judicata*, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." Clark v. Hass Group, Inc., 953 F.2d 1235, 1237 (9<sup>th</sup> Cir. 1992). The test for whether a subsequent action is barred by *res*

*judicata* is whether it arises from the same transaction or series of transactions as the original action. Western Systems, Inc. v. Ulloa, 958 F.2d 864, 871, *cert. denied*, 113 S.Ct. 970 (1993). Whether two claims are part of the same transaction depends upon whether they are related to the same set of facts and whether they could conveniently be tried together. Ulloa, 958 F.2d at 871. One group of facts may give rise to different claims for relief upon different theories of recovery, yet still constitute a single cause of action. Clark, 953 F.2d at 1239 (citing Smith v. City of Chicago, 820 F.2d 916, 918 (7<sup>th</sup> Cir. 1987)). Under the doctrine of issue preclusion, where a full opportunity has been afforded to a party to the prior action and that party has failed to prove his freedom from liability or culpability on the part of another, "there is no reason for permitting him to retry those issues." Israel v. Wood Dolson Co., 1 N.Y.2d 116, 119, 134 N.E.2d 97, 99, 151 N.Y.S.2d 1, 4 (1956). See also, Blonder-Tongue Laboratories v. University of Illinois, 402 U.S. 313, 91 S.Ct. 1434, 28 L.Ed.2d 788 (1971); Bernard v. Bank of America, 19 Cal.2d 807, 122 P.2d 892 (1942). "Permitting repeated litigation of the same issue as long as the supply of unrelated defendants holds out reflects either the aura of the gaming table or 'a lack of discipline and of disinterestedness on the part of the lower courts, hardly a worthy or wise basis for fashioning rules of procedure.'" Blonder-Tongue Laboratories, *ibid.* The

doctrine protects adversaries from the expense and vexation of duplicitous litigation (i.e. claim-splitting), conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.

Montana v. United States, 440 U.S. 147, 153-54, 99 S.Ct. 970, 59 L.ed2d 210 (1979).

In Knight I, CV-91-949Z, the Appellant asserted a cause of action under 42 U.S.C. §1983 against Royanne M. Knight, his ex-wife, and Assistant Attorney General Kathryn Kafka, representing the Washington State Department of Social and Health Services, alleging that the Washington child support statutes violate the Constitution and the Anti-Peonage Act, 42 U.S.C. § 1994. In that action, the Appellant sought injunctive relief against Kafka to prevent enforcement of the dissolution decree. The court granted Kafka's motion for summary judgment and dismissed the claim.

Appellant appealed the district court's decision to grant summary judgment to the Ninth Circuit Court of Appeals. The court affirmed the district court, stating in an unpublished opinion:

Knight challenges RCW 26.18.050 on the grounds that it constitutes involuntary servitude prohibited by the Thirteenth Amendment, and violates the Anti-Peonage Statute, 42 U.S.C. § 1994. RCW 26.18.050(4) specifies that an obligor will not be held in contempt if he lacks the means to comply with the support order and has exercised due diligence trying to comply. Contempt proceeding for voluntary failure to comply with court

orders are a proper exercise of state power. See, Hicks v. Feiock, 485 US 624, 6387 (1987). The contempt statute does not violate the Thirteenth Amendment or the Anti-Peonage Act.

Knight v. Knight, 996 F.2d 1225, 1993 WL 210667 (9<sup>th</sup> Cir. (Wash.))

*(Unpublished Opinion)*.<sup>2</sup>

In the present action, the Appellant has once again alleged that the Washington child support statutes violate the Constitution and the Anti-Peonage Act, 42 U.S.C. § 1994. Once again, the Appellant sought injunctive relief, this time against the King County defendants, to prevent enforcement of the dissolution decree. Appellant has already had a “full and fair opportunity to litigate” the issue of whether the Washington child support statute violates the Thirteenth Amendment and the Anti-Peonage Act, and was correctly estopped from asserting the claim again.

#### **IV. CONCLUSION**

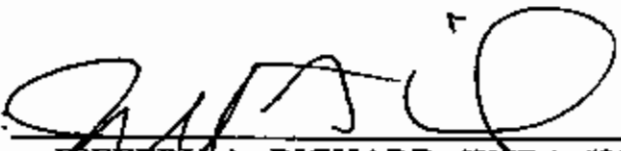
For all of the above stated reasons, Appellees respectfully request that the District Court’s order dismissing this action with prejudice be affirmed.

---

<sup>2</sup> Although an unpublished disposition, this opinion may be cited here pursuant to Circuit Rule 36.3 as “relevant under the doctrines of law of the case, res judicata, or collateral estoppel.”

DATED this 30<sup>th</sup> day of September, 2000.

NORM MALENG  
King County Prosecuting Attorney

By:   
JEFFERY A. RICHARD, WSBA #28219  
Deputy Prosecuting Attorney  
Attorneys for Respondents