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11 **Copa De Oro Land Company**

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

14 **ANTELOPE VALLEY GROUNDWATER**
15 **CASES**

16 **Included Actions:**

17 **Los Angeles County Waterworks District No.**
18 **40 v. Diamond Farming Co., Superior Court of**
19 **California, County of Los Angeles, Case No.**
20 **BC 325201;**

21 **Los Angeles County Waterworks District No.**
22 **40 v. Diamond Farming Co., Superior Court of**
23 **California, County of Kern, Case No. S-1500-**
24 **CV-254-348;**

25 **Wm. Bolthouse Farms, Inc. v. City of**
26 **Lancaster, Diamond Farming Co. v.**
27 **Lancaster, Diamond Farming Co. v. Palmdale**
28 **Water Dist., Superior Court of California,**
County of Riverside, Case Nos. RIC 353 840,
RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

Santa Clara Case No. 1-05-CV-049053
Assigned to Hon. Jack Komar

CROSS-DEFENDANT COPA DE
ORO LAND COMPANY'S CASE
MANAGEMENT STATEMENT

Date: August 11, 2008
Time: 9 a.m.
Dept.: 1
Judge: Hon. Jack Komar

1 **CASE MANAGEMENT STATEMENT**

2 Cross-defendant Copa de Oro Land Company (“Copa de Oro”) respectfully requests
3 that the Court issue an order: (1) limiting any trial in October 2008 to sub-basin issues; and (2)
4 scheduling any trial that includes determining the basin’s safe yield and the existence of any
5 overdraft until a reasonable time after the public water suppliers (the “purveyors”) complete
6 service of their cross-complaint, as proposed in the Case Management Order posted by Richard
7 A. Wood on August 1, 2008. Such procedures are the minimum required by due process.

8 **I. DUE PROCESS REQUIRES THAT ANY SAFE YIELD OR**
9 **OVERDRAFT TRIAL OCCUR AFTER THE PURVEYORS**
10 **COMPLETE SERVICE**

11 The purveyors assert that they have acquired prescriptive water rights as against an as
12 yet not completely defined set of landowners. (See First-Amended Cross Complaint of Public
13 Water Suppliers For Declaratory And Injunctive Relief And Adjudication Of Water Rights,
14 filed March 13, 2007, ¶¶ 41-45 (“Purveyor Cross-Complaint”).)¹ In order to prevail on this
15 claim, the purveyors must prove, by clear and convincing evidence, that their water uses were
16 adverse to the landowners’ rights during whatever prescriptive period it is that the purveyors
17 claim. In California groundwater cases, one component of the proof of adversity is that the
18 relevant basin was overdrafted during the prescriptive period. (See *City of Los Angeles v. City*
19 *of San Fernando* (1975) 14 Cal.3d 199, 277-278.) The purveyors have alleged – as against
20 every single landowner whom they have sued – that the basin was overdrafted during the
21 relevant prescriptive period. (Purveyor Cross-Complaint, ¶¶ 31-34, 41-45.)

22 Constitutional due process principles therefore demand that every landowner sued by
23 the purveyors have a full opportunity to litigate the basin’s safe yield and whether the basin is
24 overdrafted. In a case where a father’s parental rights were terminated without him being given
25 proper notice of the proceeding, the United States Supreme Court stated the following due
26 process principles:

27 It is clear that failure to give the petitioner notice of the pending adoption
28 proceedings violated the most rudimentary demands of due process of law.
Many controversies have raged about the cryptic and abstract words of the Due

¹ www.scefilng.org/filingdocs/214/2601/6038_FirstxAmendedxCrossxComplaint.pdf.

1 Process Clause but there can be no doubt that at a minimum they require that
2 deprivation of life, liberty or property by adjudication be preceded by notice and
3 opportunity for hearing appropriate to the nature of the case. An elementary and
4 fundamental requirement of due process in any proceeding which is to be
accorded finality is notice reasonably calculated, under all the circumstances, to
advise interested parties of the pendency of the action and afford them an
opportunity to present their objections.

5 (*Armstrong v. Manzo* (1965) 380 U.S. 545, 550 (citations and quotations omitted)(copy
6 attached).)

7 California courts have applied similar principles in cases involving real property
8 ownership (see *Smith v. Jones* (1917) 174 Cal. 513, 516), and to state that parties may not be
9 subjected to judgments entered in their absence (see *Motores de Mexicali v. Superior Court*
10 (1958) 51 Cal.2d 172, 176).

11 Simply put, adopting the purveyors' proposal to litigate the basin's safe yield, and other
12 facts that may be components of their proof of their prescriptive claims, before they complete
13 service of all of the landowners they have sued would violate basic due process principles.
14 Even proceeding with such a pre-service trial and then allowing later-served landowners to
15 relitigate the safe yield issue would violate those landowners' due process rights because due
16 process precludes the courts from effectively shifting the burden of proof as a result of a party
17 being subjected to a proceeding after the relevant issues have been litigated once. (See
18 *Armstrong, supra*, 380 U.S., at p. 551.) Proceeding with a trial on safe yield and any overdraft
19 before the purveyors complete service therefore would waste judicial resources because the
20 results of that trial could not be applied in any way to later-served landowners and the Court
21 essentially would have to hold the same trial again.

22 Copa de Oro therefore respectfully requests that the Court reschedule any trial on any
23 issue other than the existence of sub-basins as proposed in the August 1, 2008 proposed Case
24 Management Order posted by Mr. Wood.

25 **II. TO THE EXTENT THE COURT HOLDS A TRIAL IN OCTOBER**
26 **2008, THAT TRIAL SHOULD BE LIMITED TO DETERMINING**
IF THE BASIN CONTAINS SUB-BASINS

27 Copa de Oro has asserted previously that the Court should not hold any trial in October
28 2008 because of the prejudice to landowners like Copa de Oro who were not served until years

1 into this proceeding. Copa de Oro will not further repeat those arguments, but respectfully
2 requests that any trial held in October 2008 be limited to determining whether the basin
3 contains sub-basins, consistent with the proposed case management order submitted by Mr.
4 Wood. Limiting any October trial to sub-basin issues would allow the Court to: (1) advance
5 the case; (2) clarify the role of the landowner classes by allowing the class representatives to
6 determine exactly what landowners their classes represent; and (3) potentially address due
7 process issues by limiting the trial to specific sub-basin boundaries proposed by specific
8 parties.

9 **CONCLUSION**

10 For the reasons stated above, Copa de Oro respectfully requests that the Court limit any
11 October 2008 trial to sub-basin issues and reschedule any trial on safe yield and overdraft issue
12 for a reasonable time after the purveyors complete service of their cross-complaint.

13 Dated: August 6, 2008

Respectfully submitted,

14 BARTKIEWICZ, KRONICK & SHANAHAN
15 A Professional Corporation

16 By: _____

Ryan S. Bezerra

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18 Attorneys for Cross-Defendant Copa de Oro
Land Company

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PROOF OF SERVICE

I, Terry Olson, declare as follows:

I am a citizen of the United States and a resident of Sacramento County. I am over the age of 18, not a party to this action and am employed at Bartkiewicz, Kronick & Shanahan, 1011 Twenty-Second Street, Sacramento, California 95816. On August 6, 2008, I served, in the manner described below, the enclosed documents:

1. CASE MANAGEMENT STATEMENT OF CROSS-DEFENDANT COPA DE ORO LAND COMPANY.

I posted that document to the Court's World Wide Web site located at www.scefiling.org

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Sacramento, California on August 6, 2008

Terry Olson

LEXSEE 380 US 545

ARMSTRONG v. MANZO ET UX.

No. 149

SUPREME COURT OF THE UNITED STATES

380 U.S. 545; 85 S. Ct. 1187; 14 L. Ed. 2d 62; 1965 U.S. LEXIS 1348

March 9, 1965, Argued

April 27, 1965, Decided

PRIOR HISTORY: CERTIORARI TO THE COURT OF CIVIL APPEALS OF TEXAS, EIGHTH SUPREME JUDICIAL DISTRICT.

DISPOSITION: 371 S. W. 2d 407, reversed and remanded.

SUMMARY:

In proceedings instituted in the District Court of El Paso County, Texas, by a divorced mother and her new husband for the adoption of a child from the mother's first marriage, no notice of the pendency of the proceedings was given to the divorced father of the child, although the parties initiating the adoption proceedings well knew his precise whereabouts in Texas. After the adoption decree was entered, the father was notified of the adoption and promptly filed a motion to set aside the decree and grant a new trial. The District Court, without setting aside the adoption decree, granted a hearing on the motion, which was denied. The appropriate Texas Court of Civil Appeals affirmed (371 SW2d 407) and the Supreme Court of Texas refused an application for writ of error.

On certiorari, the Supreme Court of the United States reversed. In an opinion by Stewart, J., expressing the unanimous views of the Court, it was held that (1) the failure to notify the divorced father of the pendent adoption proceedings deprived him of due process of law and rendered the decree constitutionally invalid, and (2) the subsequent hearing did not cure its constitutional invalidity.

LAWYERS' EDITION HEADNOTES:

[***LEdHN1]

LAW §797

due process -- adoption -- notice --

Headnote:[1]

The failure to give a divorced father notice of the pendency of proceedings for the adoption of his child deprives him of due process of law.

[***LEdHN2]

LAW §786

due process -- notice and hearing --

Headnote:[2]

The due process clause requires as a minimum that the deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.

[***LEdHN3]

LAW §787

due process -- notice -- sufficiency --

Headnote:[3]

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

[***LEdHN4]

LAW §797

due process -- adoption -- lack of notice -- subsequent hearing --

Headnote:[4]

A violation of a divorced father's right of due process by failing to give him notice of the pendency of proceedings for the adoption of his child is not cured by

granting him a hearing on his motion to set aside the adoption decree.

[*LEdHN5]**

EVIDENCE §383

adoption proceedings -- burden of proof --

Headnote:[5]

Under Texas law, parties moving for adoption of a child over the natural father's objection have the burden of proving their case as against whatever defenses he may interpose, and it is incumbent upon them to show not only that a nonparent moving for adoption meets all the requisites of an adoptive parent under Texas law, but also that the natural father's consent to the adoption was not required; if neither side offers any evidence, those who initiated the adoption proceedings cannot prevail.

[*LEdHN6]**

LAW §786

due process -- hearing --

Headnote:[6]

A fundamental requirement of due process is the opportunity to be heard.

[*LEdHN7]**

LAW §787

due process -- hearing -- sufficiency --

Headnote:[7]

An opportunity for a hearing required by due process must be granted at a meaningful time and in a meaningful manner.

[*LEdHN8]**

LAW §797

due process -- lack of notice -- vacating adoption decree --

Headnote:[8]

The only way in which a natural father who was not given notice of pendent proceedings for adoption of his child can be restored to the position he would have occupied had due process of law been accorded to him in the first place is the granting of his motion to set aside the adoption decree and consider the case anew.

SYLLABUS

Petitioner and his wife were divorced by a Texas court. Custody of their only child was granted to the respondent mother and petitioner was ordered to pay a monthly sum for the child's support. The mother thereafter married respondent Manzo, who two years later sought to become the child's adoptive father. State law requires the natural father's written consent to adoption, an exception existing if he has not substantially contributed to the child's support for two years commensurate with his financial ability. In that case the written consent of the juvenile court judge in the county of the child's residence may be accepted. The mother filed an affidavit in her county juvenile court alleging petitioner's failure for more than two years to contribute to the child's support and the judge consented to the adoption. Respondents the same day filed an adoption petition alleging that the natural father's consent was not necessary because he had not contributed to the child's support commensurate with his ability for a period of over two years and that the juvenile court judge had given his written consent. No notice of the affidavit or adoption petition was given to petitioner, though his whereabouts were well known to respondents. An adoption decree was later entered making Manzo the child's adoptive father, upon being advised of which petitioner filed a motion seeking to have the court annul its decree. A hearing was held at which petitioner introduced evidence that he had not failed to contribute to his child's support but the court denied petitioner's motion. The appellate court affirmed notwithstanding petitioner's contention of deprivation of due process of law because of entry of the decree without notice, and the state supreme court refused review. *Held:*

1. Failure to give petitioner notice of the pending adoption proceedings deprived him of his rights without due process of law. P. 550.

2. The hearing subsequently granted to petitioner did not remove the constitutional infirmity since petitioner was forced to assume burdens of proof which, had he been accorded notice of the adoption proceedings, would have rested upon the moving parties. Pp. 550-552.

COUNSEL: Ewell Lee Smith, Jr., argued the cause for petitioner. With him on the brief were Eugene L. Smith and Ed M. Brown.

William Duncan argued the cause for respondents. With him on the brief was Eugene T. Edwards.

JUDGES: Warren, Black, Douglas, Clark, Harlan, Brennan, Stewart, White, Goldberg

OPINION BY: STEWART

OPINION

[*546] [***63] [**1188] MR. JUSTICE STEWART delivered the opinion of the Court.

The petitioner, R. Wright Armstrong, Jr., and his wife were divorced by a Texas court in 1959. Custody of their only child, Molly Page Armstrong, was awarded to Mrs. Armstrong, and the petitioner was granted "the privilege of visiting with said child at reasonable times, places, and intervals." The divorce decree ordered the petitioner to pay \$ 50 a month for his daughter's support. In 1960 Mrs. Armstrong married the respondent, Salvatore E. Manzo. Two years later the Manzos filed a petition for adoption in the District Court of El Paso County, Texas, seeking to make Salvatore Manzo the legal father of Molly Page Armstrong.¹

1 Mrs. Manzo joined the petition in order to manifest her consent to the adoption, and also filed a separate written consent.

Texas law provides that an adoption such as this one shall not be permitted without the written consent of the child's natural father, except in certain specified [**1189] circumstances. One such exceptional circumstance is if the father "shall have not contributed substantially to the support of such child during [a] period of two (2) years commensurate [***64] with his financial ability." In that event, the written consent of the judge of the juvenile court of [*547] the county of the child's residence may be accepted by the adoption court in lieu of the father's consent.²

2 Vernon's Ann. Civ. Stat., Art. 46a, § 6, provides in pertinent part as follows:

"Except as otherwise provided in this Section, no adoption shall be permitted except with the written consent of the living parents of the child; provided, however, that if a living parent or parents shall voluntarily abandon and desert a child sought to be adopted, for a period of two (2) years, and shall have left such child to the care, custody, control and management of other persons, or if such parent or parents shall have not contributed substantially to the support of such child during such period of two (2) years commensurate with his financial ability, then, in either event, it shall not be necessary to obtain the written consent of the living parent or parents in such default, and in such cases adoption shall be permitted on the written consent of the Judge of the Juvenile Court of the county of such child's residence; or if there be no Juvenile Court, then on the written consent of the Judge of the County Court of the county of such child's residence."

The petitioner does not here question the constitutional validity of the substantive provisions of this statute.

Preliminary to filing the adoption petition, Mrs. Manzo filed an affidavit in the juvenile court, alleging in conclusory terms that the petitioner had "failed to contribute to the support of" Molly Page Armstrong "for a period in excess of two years preceding this date." No notice was given to the petitioner of the filing of this affidavit, although the Manzos well knew his precise whereabouts in Fort Worth, Texas. On the basis of the affidavit, and without, so far as the record shows, a hearing of any kind, the juvenile court judge promptly issued his consent to the adoption. In the adoption petition, filed later the same day, the Manzos alleged that "consent of the natural father, R. W. Armstrong, Jr., to the adoption herein sought is not necessary upon grounds that the said father has not contributed to the support of said minor child commensurate with his ability to do so for a period in excess of two (2) years, and the Judge of a Juvenile Court [*548] of El Paso County, Texas . . . has consented in writing to said adoption." No notice of any kind was given to the petitioner of the filing or pendency of this adoption petition.

An investigator appointed by the court made a detailed written report recommending the adoption, and a few weeks later the adoption decree was entered. The decree provided in accord with Texas law that "all legal relationship and all rights and duties between such Child and the natural father shall cease and determine, and such Child is hereafter deemed and held to be for every purpose the child of its parent by adoption, as fully as though naturally born to him in lawful wedlock,"³ and further provided that "the said Molly Page Armstrong shall be known by the Christian and Surname as Molly Page Manzo, from this day forward."

3 Vernon's Ann. Civ. Stat., Art. 46a, § 9.

During this entire period the petitioner was not given, and did not have, the slightest inkling of the pendency of these adoption proceedings. On the day the decree was entered, however, Salvatore Manzo wrote to the petitioner's father, advising him that "I have this date completed court action to adopt Molly Page as my daughter and to change her name to Molly Page Manzo." The petitioner's father immediately relayed this news to the petitioner, who promptly filed a motion in the District Court of El Paso [***65] County, asking that the adoption decree be "set aside and annulled and a new trial granted," upon the ground that he had [**1190] been given no notice of the adoption proceedings.⁴

4 The third paragraph of the petitioner's motion was as follows:

380 U.S. 545, *; 85 S. Ct. 1187, **;
14 L. Ed. 2d 62, ***; 1965 U.S. LEXIS 1348

"At the time the above entitled and numbered proceeding came on to be heard and judgment rendered, your Petitioner had never been advised or given notice, actual or constructive, as required by the laws of Texas, that this proceeding was to be heard or that it was even pending or of the judgment herein until after the rendition of the judgment, nor was any attempt made to notify Petitioner in any way of this proceeding although his address and whereabouts were well known to the parties, in fact the parties to this proceeding deliberately and wrongfully withheld all notice from Petitioner for the expressed purpose of denying him any opportunity to appear, contest and present his defenses to this proceeding; and that Petitioner was prevented from appearing and presenting his defenses not by his own fault or negligence but rather by the deliberate and wrongful acts of the parties to this proceeding."

The prayer of the motion was as follows:

"Wherefore, Petitioner prays that the judgment and decree entered in this proceeding be in all things vacated, set aside and annulled and a new trial granted."

[*549] The court did not vacate the adoption decree, but set a date for hearing on the motion. At that hearing the petitioner introduced evidence, through witnesses and by depositions, in an effort to show that he had not failed to contribute to his daughter's support "commensurate with his financial ability."⁵ At the conclusion of the hearing the court entered an order denying the petitioner's motion and providing that the "adoption decree entered herein is in all things confirmed."

5 See note 2, *supra*.

The petitioner appealed to the appropriate Texas court of civil appeals, upon the ground, among others, that the trial court had erred in not setting aside the adoption decree, because the entry of the decree without notice to the petitioner had deprived him "of his child without due process of law." The appellate court affirmed the trial court's judgment,⁶ and the Supreme Court of Texas refused an application for writ of error.

6 371 S. W. 2d 407.

We granted certiorari. 379 U.S. 816. The questions before us are whether failure to notify the petitioner of the pendency of the adoption proceedings deprived him [*550] of due process of law so as to render the adoption decree constitutionally invalid, and, if so, whether the subsequent hearing on the petitioner's motion to set aside the decree served to cure its constitutional invalidity.

***LEdHR1] [1] ***LEdHR2] [2] ***LEdHR3] [3] In disposing of the first issue, there is no occasion to linger long. It is clear that failure to give the petitioner notice of the pending adoption proceedings violated the most rudimentary demands of due process of law. "Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, at 313. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Milliken v. Meyer*, 311 U.S. 457; [*66] *Grannis v. Ordean*, 234 U.S. 385; *Priest v. Las Vegas*, 232 U.S. 604; *Roller v. Holly*, 176 U.S. 398. . . ." *Id.*, at 314. Questions frequently arise as to the adequacy of a particular form of notice in a particular case. See, e. g., *Schroeder v. City of New York*, 371 U.S. 208; *New York v. New York, N. H. & H. R. Co.*, 344 U.S. 293; *Walker v. Hutchinson City*, [*1191] 352 U.S. 112; *Mullane v. Central Hanover Tr. Co.*, *supra*. But as to the basic requirement of notice itself there can be no doubt, where, as here, the result of the judicial proceeding was permanently to deprive a legitimate parent of all that parenthood implies. Cf. *May v. Anderson*, 345 U.S. 528, 533.

***LEdHR4] [4] The Texas Court of Civil Appeals implicitly recognized this constitutional rule, but held, in accord with its understanding [*551] of the Texas precedents,⁷ that whatever constitutional infirmity resulted from the failure to give the petitioner notice had been cured by the hearing subsequently afforded to him upon his motion to set aside the decree. 371 S. W. 2d, at 412. We cannot agree.

7 See *Lee v. Purvin*, 285 S. W. 2d 405; *Dendy v. Wilson*, 142 Tex. 460, 179 S. W. 2d 269; *DeWitt v. Brooks*, 143 Tex. 122, 182 S. W. 2d 687; *Johnston v. Chapman*, 279 S. W. 2d 597.

***LEdHR5] [5] Had the petitioner been given the timely notice which the Constitution requires, the Manzozs, as the moving parties, would have had the burden of proving their case as against whatever defenses the petitioner might have interposed. See *Jones v. Willson*, 285 S. W. 2d 877; *Ex parte Payne*, 301 S. W. 2d 194. It would have been incumbent upon them to show not only that Salvatore Manzo met all the requisites of an adoptive parent under Texas law, but also to prove why the petitioner's consent to the adoption was not required. Had

380 U.S. 545, *; 85 S. Ct. 1187, **;
14 L. Ed. 2d 62, ***; 1965 U.S. LEXIS 1348

neither side offered any evidence, those who initiated the adoption proceedings could not have prevailed.

Instead, the petitioner was faced on his first appearance in the courtroom with the task of overcoming an adverse decree entered by one judge, based upon a finding of nonsupport made by another judge. As the record shows, there was placed upon the petitioner the burden of affirmatively showing that he had contributed to the support of his daughter to the limit of his financial ability over the period involved. The burdens thus placed upon the petitioner were real, not purely theoretical. For "it is plain that where the burden of proof lies may be decisive of the outcome." *Speiser v. Randall*, 357 U.S. 513, 525. Yet these burdens would not have been imposed upon him had he been given timely notice in accord with the Constitution.

[*552] [***LEdHR6] [6] [***LEdHR7] [7] [***LEdHR8] [8] A fundamental requirement of due process is "the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394. It is an opportunity which must

be granted at a meaningful time and in a meaningful manner. The trial court could have fully accorded this right to the petitioner only by granting his motion to set aside the decree and consider the case anew. Only that would [***67] have wiped the slate clean. Only that would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place. His motion should have been granted.

For the reasons stated, the judgment is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

REFERENCES

Annotation References:

Necessity of notice to parents or legal custodian before adoption of child. 24 ALR 416, 76 ALR 1077.

Consent of natural parents as essential to adoption where parents are divorced. 47 ALR2d 824.