

040910

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PROVIDENCE, SC. FAMILY COURT

BENJAMIN N. PECKHAM :
:
v. : No. P03-1793M
:
LESE R. GIESELMAN :

DECISION

JEREMIAH, CJ. The matter before the Court is a motion to change the custody and placement of two (2) minor children and a motion to hold in contempt filed on behalf of the defendant, Lese R. Gieselman (hereinafter referred to as "Gieselman"). The plaintiff, Benjamin N. Peckham (hereinafter referred to as "Peckham"), has filed an objection to both motions. The parties to the above-entitled action were divorced in the Circuit Court of the Ninth Judicial Circuit in Orange County, Florida on February 9, 2000 (See case No. DR-99-11775). Ms. Gieselman was awarded primary residential custody of the two (2) minor children, Sariah Rose Peckham, (d.o.b. 10/12/96), and Isaiah Nathan Peckham, (d.o.b. 1/19/98). Mr. Peckham was awarded reasonable rights of visitation (See Dec. 9/23/2002, Adams, J., Cir. J.).

At a subsequent hearing in Florida, the father obtained physical possession of the children, this decision was entered post-final on September 23, 2002 by the Florida Court. The father, Peckham, by stipulation on the record and by testimony, stated that he moved from Florida to Rhode Island approximately one (1) month after the entry of the order awarding him placement and custody. After various hearings in the Florida Court,

that honorable Court made a finding on April 7, 2003 that Peckham interfered with court ordered telephone contact between Gieselman and the minor children. This matter proceeded to a hearing on the merits and the Court heard numerous days of testimony and various exhibits were entered into the record relative to the hearing of the several motions that were pending.

Peckham argues that Gieselman is an unfit parent. In support of this argument, he asserts that Gieselman and her present husband, Paul Gieselman, have completely ignored the principles of shared parenting. He alleges that the children have visited with the biological mother in Utah and have shown an unusual fear of expressing love or affection toward their step-mother after visiting with her. He further alleges that his present wife is a primary psychological parent to these children and they voluntarily refer to her as “mommy”. Furthermore, he alleges that Geiselman has intentionally disparaged and criticized him as well as his present wife. Peckham, more specifically in his pleadings, points to Section 9 of the Modified Final Judgment of Dissolution of Marriage from the state of Florida. Section 9 reads in pertinent part:

“Both parties shall exercise in the utmost of good faith his or her best efforts at all times to encourage and foster the maximum relations of love and affection between the minor children and the mother and father. Neither party shall in any way impede, obstruct, or interfere with the exercise by the other of his or her right of companionship with the minor children and neither of them at any time shall or in any manner disparage nor criticize the other parent or allow any other to do so to or in the presence of the minor children. Neither party shall harass or threaten the other party and shall not contact the other party unless it involves the children. This also includes step-parents.”

Geiselman argues that Peckham is the one who violated the language contained within Section 9 of the Final Judgment. She argues that Peckham has exhibited a continuous pattern of disparaging her to the minor children outside of her presence and desires to have the step-mother assume the role of mother. She claims that this is supported by fact that the children are being forced to call Peckham's present wife "mommy".

In support of Peckham's motion, he has offered four (4) exhibits.

- (A) a card that the respondent mother had sent to the children;
- (B) a report of a guardian ad litem from the state of Florida;
- (C) a document from an unidentified doctor's name for Isaiah;
- (D) a report of a Dr. Vicky Burgess for the child Isaiah.

Peckham's Exhibit A (full) is construction paper with pictures of the children stating, "My Protection Pentacle." Peckham argues that Geiselman practices witchcraft and/or Wicca and that practice is not in the children's best interest. Peckham's Exhibit B (full) is a guardian ad litem report from the Circuit Court of Orange County, Florida. The gravamen of the report supports the father's position that he is a good father; that the children appear to be happy, well-mannered; that the step-parent, Michelle, has the children's best interests at heart. Then, the guardian goes through a rather intense evaluation considering all of the factors that are required under the Florida statute and makes ten (10) findings at the end of the report, stating that the father should have primary residency of the children; the mother should be allowed visitation; and the mother should be allowed to see the children on any weekend, she desires. The Court is mindful that this report of the guardian ad litem was prior to the first finding of contempt

on behalf of the father. The Court finds that although this document may have been relevant at the time of the initial divorce proceeding and the dissolution of the marriage, that it is inconsistent with the conduct of the plaintiff after the children have been moved to Rhode Island. Exhibit D (full), on behalf of Peckham, was a clinical psychologist's report and an evaluation conducted on the child, Isaiah Peckham. This evaluation clearly makes a finding that the child is having nightmares and suffers from anxiety. More particularly, Dr. Burgess finds that one parent appears to be attempting to pull their children away from the other parent and that eventually Isaiah will react negatively to this type of treatment. The Court agrees with this conclusion.

Gieselman has also offered a number of exhibits. Exhibit 1 (full) contains hateful messages from plaintiff that were transcribed off the answering machine of the defendant. These phone messages trouble the Court in that they are an attempt by the father to alienate the children against their mother. These phone records indicated that the father stated to the children that their mother was attempting to put a spell on them, and that he cannot lie to them. In addition, the phone messages stated: "I think you are a horrible mother and a horrible person." He further states that his present wife is the real mother to the children. He also tells Gieselman not to call his home where the children reside.

Respondent's Exhibit 2 (full) is an unopened letter, postmarked March 6, 2004. It is indicated on the letter that it is a restricted delivery. It appears to be some type of card going to Ben Peckham sent from Mommy and Paul, Salt Lake City, Utah, certified mail, return receipt. This letter was not given to the child.

Of particular interest to the court is Exhibit 5 (full). This exhibit is a recording in which Peckham is talking to the minor child, Isaiah, and the minor child states that he has

been instructed by his father to call the step-mother “mother” and not to call his real mother “mother.” The mother is comforting to the child and understands that the child will be the product of retaliation in the event that the child is not instructed to do what the plaintiff-father states. Gieselman also offers a conversation that the Court finds abhorrent contained within defendant’s Exhibit 7 (full). This conversation was between the mother and the child, Isaiah, in which the child begins to tell the mother about an incident that happened between the child and the father the night before. The child apparently wanted some dessert. The step-mother agreed. The father disagreed and inflicted corporal punishment upon the minor child. The problem which the Court has with this conversation is that clearly the father was overhearing the conversation between the child and the step-mother and struck the child when the child made a statement to the step-mother that was unsatisfactory to him. Irrespective as to the validity of the statement as to the child, the Court is particularly concerned about the father’s clear manipulation of the child while the conversations, long-distance, between the mother and child occurred. The respondent offers as Exhibit 11 (full) a psychological evaluation on behalf of the child, Sariah Peckham, where the same recommendations that were made for Isaiah were made for Sariah and I quote:

“The biological parents appear to be attempting to pull the children away from the other parent. Eventually Sariah will react negatively to this treatment from her parents.”

In addition, the Court is mindful that the father has stated to the mother that he blames her for the child, Isaiah, having asthma and that the reason is because she smoked during the pregnancy. There is no scientific evidence to support such an allegation and

based upon the father's past conduct, there is evidence through this hearing that clearly he has told the children that the reason why they has asthma is their mother's fault.

ANALYSIS

The plaintiff-father has placed emphasis on Section 9 of the Modified Final Judgment of Dissolution of Marriage, Id. The Court agrees that the language of Section 9 must be adhered to as both parties. The plaintiff has not established to the satisfaction of the Court that the defendant-mother has violated this provision. To the contrary, the Court finds that the plaintiff has willfully violated Section 9. The overwhelming evidence shows that immediately following the entry of this order, the plaintiff undertook a calculated plan to violate that provision and alienate the minor children from their mother. The Court has reviewed all the evidence and observed the demeanor of each witness. The plaintiff has demonstrated through his actions that he has no interest in co-parenting the minor children of the parties. Mr. Peckham has returned mother's cards unopened that were sent to the children and taped discussions where he made disparaging remarks towards the children. As a result of his actions, the court finds Mr. Peckham in willful contempt.

Rhode Island General Laws, section 15-5-16(d)(1) reads:

“In regulating the custody of the children the court shall provide for the reasonable right of visitation by the natural parent not having custody of the children except upon the showing of cause why the right should not be granted. The court shall mandate compliance with its order by both the custodial parent and the children. In the event of noncompliance, the noncustodial parent may file a motion for contempt in

family court. Upon a finding by the court that its order for visitation has not been complied with, the court shall exercise its discretion in providing a remedy, and define the noncustodial parent's visitation in detail. However, if a second finding a noncompliance by the court is made, the court shall consider this to be grounds for a change of custody to the noncustodial parent."

The seminal case of Pettinato v. Pettinato, 582 A.2d 909 (R.I. 1990), is the guidepost from which this Court makes determinations relevant to the best interests of the child, particularly how it pertains to the placement and custody of children. Within that case, the R. I. Supreme Court has stated various factors for the Court to consider in making such determinations.

Some of these factors are as follows:

(1) *The wishes of the child's parent or parents regarding the child's custody.*

Clearly, both parents want custody of these children as well as placement;

(2) *The reasonable preference of the child if the Court deems that the child to be of sufficient intelligence, understanding and experience to express a preference.* The Rhode Island Family Court investigator had a discussion with the children in which they stated that they enjoyed themselves with the mother as well as with the father;

(3) *The interaction and inter-relationship of the children with the child's parents, child's siblings, and any other person who may significantly affect the child's best interests.* The minor children of the parties are of tender years and have a healthy relationship with both parents. In addition, they have what appears to be a good relationship with their step-mother and step-sibling. However, the Court is uncertain as to whether that relationship is genuine or has been forced upon the children by their father.

The minor children appear to be well-adjusted to their home, school and community as well as the mother's community. There is no evidence that is contrary to the same. In fact, the respondent had offered a home study that was conducted in Utah which stated that her living conditions were fit and proper for placement of the children.

(4) *The physical and mental health of the parties.* The parties are both physically and emotionally in good health.

(5) *Disability of the children's home environment.* The evidence indicates that both homes are stable for purposes of placement of the children.

(6) *The moral fitness of the child's parents.* The plaintiff asserts that because the mother engages in witchcraft that she should be deemed morally unfit. However, the fact standing alone that mother practices witchcraft is not enough to support a finding that mother is unfit. Therefore, the Court finds that both parents are morally fit to raise the children and to have placement.

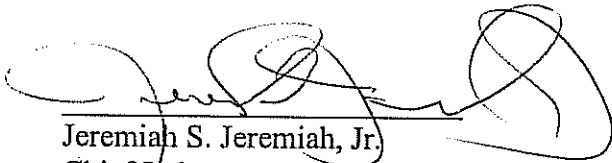
(7) *The wellness and the ability of each parent to facilitate a close and continuous parent-child relationship between the child and the other parent.* The Court finds this factor particularly relevant in this case. The overwhelming amount of evidence indicates that the father is not interested in facilitating a close and continuous parent-child relationship between mother and the minor children. It appears from the evidence, that he is not willing to facilitate any positive relationship between the children and their mother. This was poignantly demonstrated when he referred to the mother as both sick and Hitleresque. In addition, his desire to poison the mother-children relationship is revealed in telephone conversations, the psychological report of both children and father's insistence that the minor children refer to their step-mother as "Mommy".

CONCLUSION

The court has weighed the factors set forth in Pettinato and based upon these factors, the Court finds that it is in the best interest of the minor children to be placed with their mother in Utah and that the father shall be awarded reasonable rights of visitation, to include holidays and summers. Additionally, the Court finds that the plaintiff is in willful contempt of Section 9 of the Florida court order.

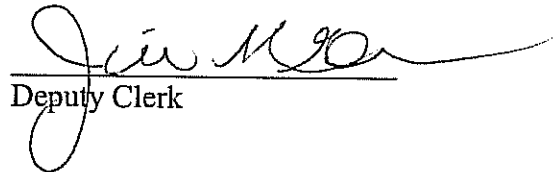
Counsel shall submit the appropriate order.

Per Order:



Jeremiah S. Jeremiah, Jr.
Chief Judge
Rhode Island Family Court

Dated: 4/18/04



Deputy Clerk

Dated:

CERTIFICATION

I hereby certify that I mailed a true copy of the within Decision, postage prepaid, to the attorneys of record at their usual place of business on 4-20-04, 2004.

