

STATE OF RHODE ISLAND

FAMILY COURT

PROVIDENCE, SC

LOUIS D. MEDEIROS

V.

F.C. NO. P-2000-0485

REBECCA H. MEDEIROS

DECISION

This is a domestic relations proceeding between the above named parties. This matter was bifurcated and the parties were finally divorced by a Judgment of this Court dated June 6, 2001. The issues that remain unadjudicated are custody and visitation of the minor child of the parties, Riley, and the equitable distribution of certain personalty of the parties. The Court must also calculate and award child support once custody is awarded.

The Court heard testimony over several days in 2001. Thereafter, Plaintiff obtained new counsel and the matter was delayed for a considerable time while the parties sought to schedule expert witnesses regarding

allegations about the mental health of the Defendant. Ultimately the parties agreed to complete the testimony in this matter by taking a number of depositions and submitting the same by stipulation.

The court having considered all of the believable credible evidence presented by both parties makes the following findings. The parties were married on November 13, 1996 after the Defendant alleged that she was pregnant with the Plaintiff's child. This assertion by the Defendant was not true. Defendant had also falsely informed the Plaintiff, prior to their marriage, that she had six million dollars in assets.

While these false claims might in other circumstances be passed off as merely an aggressive sales pitch by a young woman seeking the hand of an eligible bachelor, in this instances they reflect a troubling pattern of conduct by the Defendant in many areas of her life. Defendant's medical records show that, even before her relationship and subsequent marriage to the Plaintiff, Mrs. Medeiros (now Mrs. Allen) on numerous occasions misrepresented her medical symptoms to a variety of health care providers. She often changed health care providers and sought and received treatment and prescription drugs from providers that were unaware of her previous medical history. On at least one occasion she was caught inducing a high fever to substantiate her claim that she needed treatment. In May of 1996,

prior to her marriage to the Plaintiff, she was diagnosed by Doctors Goodman and Helms at the Presbyterian Hospital in Dallas, Texas with Munchausen's Syndrome or Fictitious Disorder.

It is clear from the record that Munchausen's Syndrome is not a formal diagnosis found in the DSM IV. It is also clear from the record that considerable expertise is required to make the formal diagnosis of Fictitious Disorder, and that physicians are generally reluctant to make such a finding. Munchausen's Syndrome is one of the behaviors that can lead to a diagnosis of Fictitious Disorder.

Mrs. Allen's course of conduct did not end in May of 1996. She continued after her marriage to Mr. Medeiros to fabricate and exaggerate symptoms of a variety of illnesses and to misrepresent the findings of her health care providers.

The Plaintiff presented the testimony of two renowned experts in the area of Fictitious Disorder, Doctor Theodore Nadelson and Catherine Ayoub, PHD. Dr. Nadelson testified about his review of Mrs. Allen's records how her pattern of behavior illustrates Munchausen's Syndrome. He confirmed the diagnosis of Fictitious Disorder. He also opined that Mrs. Allen's particular type of Fictitious Disorder is like an addiction and is resistant to treatment. Dr. Nadelson outlined the dangers to Mrs. Allen's

long term health that could result from this disorder. The Court would not qualify Dr. Nadelson as an expert in Munchausen's by Proxy. The Doctor was therefore not allowed to express an opinion as to whether Defendant could be diagnosed with Fictitious Disorder by Proxy. Although Dr. Nadelson was not allowed to express such an opinion, he was able to draw the court's attention to Mr. Allen's course of conduct with respect to the medical treatment of her daughter.

The testimony and medical records again reflect that Mrs. Allen often alleged symptoms of illness in Riley that were not confirmed by lay or expert examination of the child. Her attempts to pass this off as the typical concerns of a new mother lack credibility. The Court finds that this child has on numerous occasions be subjected to needless examinations and that on at least one occasion, with regard to an alleged stomach ailment, needless treatment.

The Court also finds that based on her education and training and based on her extensive work in the area of treatment of patients with Fictitious Disorder that Catherine Ayoub is qualified as an expert in the diagnosis, treatment and symptomatology of the Fictitious Disorder commonly known as Munchausen's Syndrome. Although Dr. Ayoub testified that she could give an opinion within a reasonable degree of

professional certainty as to whether Mrs. Allen also has Fictitious Disorder by Proxy, the Court finds based on the believable credible evidence that, at this time, there is inadequate regularly accepted scientific evidence of the causes and symptoms of this alleged disorder to allow such an opinion.

The Court finds Dr. Ayoub's opinion confirming the diagnoses of Dr. Nadelson, Dr. Goodman and Dr. Hart to be credible, and finds that Mrs. Allen does suffer from Fictitious Disorder commonly known as Munchausen's Syndrome. Dr. Ayoub's opinion does differ in one important way from the opinion of Dr. Nadelson. Dr. Ayoub's opinion seems to be that this disorder is more treatable than Dr. Nadelson feels. The Court finds that based on her experience in the treatment of individuals whom have this disorder, that Dr. Ayoub's opinion regarding the availability of successful treatment is credible.

The Court also finds Dr. Ayoub to be an expert in risk assessments for children. Dr. Ayoub has not performed a full risk assessment of Riley and cannot therefore provide a comprehensive opinion as to the relative risks to the child if she is placed with either parent. She has, however, confirmed the Court's concerns about the mother's conduct as it may effect the best interests of the child.

Obviously the Defendant's actions over the last several years have put her own health at risk. Additionally, however, she has also placed the child's health at risk when putting the child through unnecessary examinations and treatment.

She has also set a poor example for the child regarding the need to tell the truth. Her fabrications are not limited to her medical condition. Her history of lying about her finances, her pregnancy, the medical condition of herself, the child, and even the family pet, and a series of unproven allegations about Mr. Medeiros demonstrate that Mr. Allen will say anything to get what she wants. Even her testimony in this case shows a pattern of selective memory and inconsistencies that go way beyond a mere lack of credibility. The child's assertion on one occasion that she likes to be sick because it gets her attention, demonstrates that the mother can easily pass her manipulative lifestyle on to her daughter. Dr. Ayoub calls this modeling.

The Court must therefore determine what is in the child's best interest with regard to her custody and placement. The Rhode Island Supreme Court has long held that child custody determinations must be made pursuant to what is in the "best interests of the child". *Pettinato v. Pettinato*, 582 A.2d 909, 913 (R.I. 1990). The Court must consider a

combination of, and the interaction between, all of the factors outlined by the Supreme Court. *Pettinato*, id. Those factors include:

1. The wishes of the child's parent or parents regarding the child's custody.
2. The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.
3. The interaction and interrelationship of the child with the child's parent or parents, the child's siblings, and any other person who may significantly affect the child's best interest.
4. The child's adjustment to the child's home, school, and community.
5. The mental and physical health of all individuals involved.
6. The stability of the child's home environment.

7. The moral fitness of the child's parents.

8. The willingness and ability of each parent to facilitate a close and continuous parent-child relationship between the child and the other parent.

Obviously both Plaintiff and Defendant want custody and possession of Riley. It is also obvious that neither party desires to share joint custody.

Riley is too young to provide the Court with a credible preference regarding where she would desire to live. The parties have recognized this and have not sought to introduce any testimony regarding the child's preferences.

The child appears to be doing well in the home of her father and paternal grandparents. She appears to love both parents and there is no evidence that she has any difficulty with her stepfather.

The child appears well adjusted to living with her father and grandparents. Her health problems have diminished significantly and there is no evidence of the child having any physical or psychological problems at this time. The visitations with the mother, under the strict guidelines set out by the Court, seem to be working well, although the court is mindful of the continuing allegations of non-compliance with scheduling.

The Court has outlined the mental and physical health issues in detail above. The Court has no evidence of any physical health issues with regard to the father. His excessive need for control is problematic, but pales in the face of the mother's issues.

The child now appears very stable in the home of the paternal grandparents. Mother has a new home of her own and is remarried. Mrs. Allen works full time. Father lives with his parents. Father is still in law school and working full time.

Mother had a relationship during the marriage of the parties with Dr. Allen, whom she married soon after the divorce herein. Except for Mrs. Allen's lack of truthfulness, and Mrs. Allen's extramarital affair, there is no other reliable, credible evidence of moral issues in this case.

Neither parent has demonstrated any intense desire to facilitate a close and continuous relationship between the child and her other parent. Mrs. Allen in particular has denied Mr. Medeiros contact with the child on occasion and has tried to get Riley to address her new husband as "dad". These problems are not unusual in a custody battle and ordinarily will resolve once the relative rights of the parties have been settled.

Based on these findings, the Court finds that it is in the best interest of the child that Mr. Medeiros have custody and possession of Riley. The Court has weighed all of the so-called Pettinato factors and all of the statutory criteria set out in R.I.G.L 15-5-16 in determining what is in the child's best interest. The child is well adjusted to life with her father and his parents, and Mrs. Allen's moral and mental health issues require serious monitoring and treatment so as not to negatively affect the child.

The parents have little ability to communicate. Mrs. Allen's issues require that the father make the major decision regarding the child's health and safety. The Court finds that it is in the child's best interest that the Plaintiff has sole custody of the child. The Plaintiff is therefore awarded sole custody and physical possession of Riley and the mother is awarded limited rights of visitation as follows. The mother may have visitation Tuesday and Thursday evenings from whatever time after school the mother is available until 8:00 p.m. She is also awarded visitation every other weekend from Saturday from 9:00 a.m. until Sunday at 6:00 p.m.

Defendant shall not be awarded any further unsupervised overnight visitation until she engages in a full risk assessment as outlined in the recommendations of Dr. Ayoub. Defendant is not to procure medical or psychological treatment for the child unless the child is physically injured.

Should emergency treatment be necessary during mother's visitation, father is to be notified immediately and upon his arrival the visit shall cease.

Should the child become ill during a visit she shall be returned to the father forthwith and the visit shall cease. If the child becomes ill while in the father's care, any scheduled visit will be postponed until the child is well and any missed visit will be made up within two weeks.

Mother will have visitation Mother's Day from 9:00 a.m. until 4:00 p.m. Mother will have Christmas Day from 11:00 a.m. until 7:00 p.m. Should the child's birthday be in a Saturday, mother's visit will terminate at 3:00 p.m. Should the child's birthday be on a Sunday, mother will have visitation from 3:00 p.m. until 7:00 p.m.

The Court finds the mother's monthly gross income is \$9417.00 and that the father's gross monthly income is \$2600.00. The Court orders the Defendant to pay the Plaintiff, monthly, an amount equal to the minimum child support guideline, based on these findings, pursuant to R.I.G.L. 15-5-16.2 and the formula adopted by Family Court Administrative Order 2002-03 (amending Administrative Order 1997-08). If either party has health insurance as a benefit of their employment, they shall maintain the same for the benefit of the minor child as long as the child is eligible. Any and all uninsured medical, dental, eye care, orthodontic or prescription expenses for

the minor child shall be divided by the parties equally. Plaintiff shall be allowed to take the child as an exemption on his income tax return in all even-numbered years. So long as she is current in her child support as of December 31st of the year in question, Defendant may take the child as an exemption in the odd-numbered years.

Plaintiff has asked for the equitable distribution of certain assets of the parties, reflected in a two page inventory which has been made a part of the record, pursuant to R.I.G.L. 15-5-16.1 which states:

§ 15-5-16.1. Assignment of property

(a) In addition to or in lieu of an order to pay spousal support made pursuant to a complaint for divorce, the court may assign to either the husband or wife a portion of the estate of the other. In determining the nature and value of the property, if any, to be assigned, the court after hearing the witnesses, if any, of each party shall consider the following:

(1) The length of the marriage;

(2) The conduct of the parties during the marriage;

(3) The contribution of each of the parties during the marriage in the acquisition, preservation, or appreciation in value of their respective estates;

(4) The contribution and services of either party as a homemaker;

(5) The health and age of the parties;

(6) The amount and sources of income of each of the parties;

(7) The occupation and employability of each of the parties;

(8) The opportunity of each party for future acquisition of capital assets and income;

(9) The contribution by one party to the education, training, licensure, business, or increased earning power of the other;

(10) The need of the custodial parent to occupy or own the marital residence and to use or own its household effects, taking into account the best interests of the children of the marriage;

(11) Either party's wasteful dissipation of assets or any transfer or encumbrance of assets made in contemplation of divorce without fair consideration; and

(12) Any factor which the court shall expressly find to be just and proper.

Since the Plaintiff is asking for affirmative relief, the burden of proof is on him to provide evidence on each of these factors which the statute mandates the Court "shall consider". Plaintiff has failed to introduce any credible evidence with regard to factors number 3, 4, 8, 9, and 10. Plaintiff has therefore failed to meet his burden of proof, and his prayer for relief under this section is denied.

R.I.G.L. 15-5-16.1 (b) prohibits the Court from assigning an interest of a party in property held prior to the marriage, unless the spouse asking for such an assignment proves contribution toward an increase in the value of the asset, or transmutation of the asset. The unrebutted evidence is that the

Plaintiff held twenty-eight assets listed in his inventory prior to the marriage. Defendant has neither denied this claim nor asserted contribution or transmutation. The Court therefore finds that these items are the sole property of the Plaintiff. Defendant is ordered to transfer these assets back to the Plaintiff within thirty days.

Both parties are self sustaining and all further claims for equitable distribution, alimony or counsel fees by either party are denied and dismissed.

The parties shall submit a written order and a child support guideline worksheet herein.

ENTERED, as a Decision of this Honorable Court this 10th day of November, 2003.

MICHAEL B. FORTE

ASSOCIATE JUSTICE