

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

DR 2000-090543

08/03/2005

HONORABLE ARTHUR T. ANDERSON

CLERK OF THE COURT
M. Scott
Deputy

IN RE THE MARRIAGE OF
WALTER J BURIEN JR.

FILED: 08/22/2005

DEEAN GILLESPIE

AND

DEBBIE C WATTON

TROY L BROWN

PAULA J COTITTA
JOHN L POPILEK
6909 E GREENWAY PKWY
STE 200
SCOTTSDALE AZ 85254
AG-CHILD SUPPORT-EAST VALLEY
OFFICE

MINUTE ENTRY

This is a paternity case with two minor two children: John Joseph (born 7/8/99) and Gloria (born 7/11/00). Temporary Orders have been in place since February 21, 2002. On October 20, 2004 and November 18, 18, 2004, this Court held an evidentiary hearing on the custody and parenting time. Following the November 18, 2004 hearing, the Court conferred with Susan Kelly of Child Protective Services and ordered that Gloria be interviewed by Dr. Mary Ann Lanzilotta. Dr. Lanzilotta issued a report dated April 20, 2005 and on June 3, 2005 the Court conducted a telephonic conference with counsel (Petitioner also present telephonically) and Dr. Lanzilotta. The Court's June 3, 2005 minute entry reflects that hearing and the stipulated decision to rule on the record before the Court.

CUSTODY AND PARENTING TIME

In considering the "best interest of the children", the Court considers the factors of A.R.S. §25-403 and other relevant information.

Father seeks joint legal custody and designation as the primary residential parent of both children. Father maintains that Mother is incapable of raising Gloria on her own and that the

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maternal grandmother and step-father are raising the children. He further contends that since the grandparents do not like or trust him, they intentionally alienate him from his children. Mother contends that Father has a history of sexual misconduct with children, maintains an unsafe house, lacks appropriate parenting skills (noting that Father was precluded from having custody of his other daughter) and has a personality which makes co-parenting impossible. Mother wants to be the primary residential parent for both children.

Initially, the Court notes that in the Temporary Orders ruling (Judge Udall's Minute Entry of February 21, 2002), the Court found that the children are thriving in their current environments (John Joseph with Father and Gloria with Mother). Judge Udall also found several instances of unsubstantiated allegations leveled against each party. Both parties were found to be uncooperative with each other regarding parenting time.

The trial in this Court confirmed the continued existence of these circumstances. In addition, since Judge Udall's Orders, the distance between households has made exchanges more difficult, time consuming, and costly.

The evidence contains a number of psychological evaluations. For example, in the evaluation of Gloria by Dr. Hunt (report dated 3/6/04) it is reported that overall Gloria tested within normal limits. Gloria was diagnosed with an Adjustment Disorder with Disturbance of Emotions & Conduct apparently as the result of the discord between the parents and the maternal grandparents. Dr. Hunt also noted that the parental discord may also lead to the alienation of Father from Gloria. John Joseph has developmental delays, particularly with speech, which is being addressed at school.

In an evaluation by Dr. Sullivan (12/10/01) it is noted that Father has consistently revealed a suspicious and guarded nature and is overly sensitive to criticism by others. The record also notes Father's consistent assignment of blame to others for the current custody situation. The Psychological Evaluation of Father by Dr. Hunt (1/29/03) indicates the absence of a psychological disorder but a need for parenting skill instruction and counseling. Dr. Hunt further notes that Father lacks insight on how these traits impact his relationships with others.

The issue of Mother's ability to independent care for the children was raised at trial and noted in the Conciliation Services Report. Evidence was presented that mother lacks the ability to independently operate a household, maintain a steady job or care for the children on her own.

THE COURT FINDS that

- The record does not persuade this Court that circumstances warrant the removal John Joseph from Father's home or Gloria from Mother's residence.

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- Mother has done little, if anything, to remedy the concerns over her ability to care for a child independently. The Court is not persuaded by the testimony that Mother is the primary care provider of Gloria and that the grandparents are merely her back-up.
- The maternal grandparents have assumed a significant role in the lives of these children and have contributed to the persistent conflict with Father.
- Despite repeated recommendations that Father obtain counseling and enhance his parenting skills; he has done little, if anything.
- The on-going conflict has so consumed this family (including the grandparents) that the parents have ignored addressing their own deficiencies.
- The conflict between the parents, the maternal grandmother and step-father and Father creates tension which negatively impacts the children.
- Despite the antagonistic atmosphere that surrounds this family, the children are doing relatively well in their current environments.
- While the temporary custody and parenting time orders are not ideal (the children are separated from each other), neither parent has demonstrated that it is in the best interest of the children to realign the primary custodial parent arrangement of these children.

THE COURT FURTHER FINDS that it is in the best interest of the children that

- Father remains as the primary custodial parent of John Joseph.
- Mother must reside with the maternal grandmother and step-father as a condition of Mother remaining the custodial parent of Gloria.
- If Mother wishes to no longer reside with the maternal grandmother and step father, she must Petition the Court (before the change occurs) to request that she continue to be the primary residential parent. The Court will conduct a hearing to determine if Mother, either alone or under the supervision of another, can continue as the primary residential parent of Gloria.
- There shall be no contact (in person, telephonically or writing) between the maternal grandmother and step-father and Father.
- The parents shall communicate in writing only through a notebook that is to be exchanged at the time of the exchange of the children. This notebook shall, (at a minimum) keep each parent informed of the children's medical, educational and counseling progress.
- The parents continue to have joint legal custody. Gloria is to continue in her counseling.
- John Joseph is to continue with the remedial speech program.
- The parenting schedule ordered below is in the best interest of the children.

VISIT TO EAST COAST

Father has requested that he be allowed to take both children to New Jersey to visit his family for four or five months. The Court believes that such an extended trip is not in the best interest of the children. However, Father can take the children to New

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Jersey during his summer vacation time (or other parenting time) *and* he must comply with the “Notice Requirements” stated below.

IT IS THEREFORE ORDERED that

- Father remains as the primary custodial parent of John Joseph.
- Mother must reside with the maternal grandmother and step-father as a condition of Mother remaining the custodial parent of Gloria,
- If Mother wishes to no longer reside with the maternal grandmother and step father, she must Petition the Court (before the change occurs) to request that she continue to be the primary residential parent. The Court will conduct a hearing to determine if Mother, either alone or under the supervision of another, can continue as the primary residential parent of Gloria.
- There shall be no contact (in person, telephonically or writing) between the maternal grandmother and step-father and Father.
- The parents shall communicate, in writing only, through a notebook that is to be exchanged at the time of the exchange of the children. This notebook shall, (at a minimum) keep each parent informed of the children’s medical, educational and counseling progress.
- The parents continue to have joint legal custody.
- Gloria is to continue in her counseling.
- John Joseph is to continue with the remedial speech program.
- The following parenting schedule applies:

Weekday/Weekend Schedule

Father shall have *both* children the first and third weekends of the month and Mother shall have *both* children the second and fourth weekends of the month. The weekend parenting time shall commence at 9:00a.m. on Saturday and finish at 6:00pm on Sunday. The receiving party is responsible for the driving, unless the parties agree in writing on a more convenient exchange process.

Summer/Vacations

The regular weekday/weekend schedule will be used for all twelve months of the year, with the exception that each parent will be entitled to *four weeks* of vacation time with the children during the summer.

Notice Requirements: The vacationing parent will give the other parent at least 30 days advance notice of any upcoming vacation with the children. Prior to leaving with the children, the vacationing parent will inform the other parent of travel arrangements,

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location(s), and an emergency telephone number where the vacationing parent may be reached in an emergency.

Holiday Schedule

Spring School Break/Fall School Break- Each break will be divide in half with each parent taking the half attached to his/her weekend. The exchange time midway through each break will be Wednesday at 5 p.m.

Christmas Eve and Christmas Day - In odd-numbered years from noon December 24th until noon December 25th will be spent with Mother and from noon December 25th until noon December 26th will be spent with Father. This schedule will reverse in even-numbered years.

Winter School Break- Will be divided in half by mutual agreement of the parents, excluding the Christmas Eve/Day arrangements.

Other Holidays-The parties shall attempt to work out a schedule for Thanksgiving, Easter, July 4th, Halloween, child's birthday, Mother's Day, Father's Day. If an agreement cannot be reached, the Weekday/Weekend schedule applies.

- Father can take the children to New Jersey during his summer vacation time (or other parenting time) *and* he must comply with the "Notice Requirements" stated above.

CHILD SUPPORT

The Court has confirmed that this case remains a Title IV-D matter.

IT IS ORDERED referring this matter to the assigned IV-D Commissioner for calculation of child support.

DR. LANZILOTTA'S INVOICE

In her letter to the Court and the parties, Dr. Lanzilotta advises that she has received Mother's share of the Court ordered payment but Father has not paid to date.

IT IS ORDERED that within 20 days of this Order Father pay Dr. Lanzilotta his portion of her fee for the services provided (Gloria investigation). If the Court is advised that the bill is not paid timely, the Court will schedule an Order to Show Cause hearing re: Father's Contempt.

FAMILY COURT ADVISOR

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Upon further reflection, the Court agrees that Dr. Lanzilotta remain on this case as a Family Court Advisor.

THE COURT FINDS that pursuant to Rule 6.12, Maricopa County Local Rules that the parents are persistency in conflict, there is a history of parental alienation, there are concerns about the mental health and behavior of the parents and it is in the best interest of the children to have the guidance of a Family Court Advisor.

IT IS ORDERED that within 30 days of this Order the parties contact Dr.Lanzilotta and each pay 50% of the Family Court Advisor retainer.

ATTORNEY'S FEES

THE COURT FINDS that it is appropriate that each side bear their own costs and attorney's fees.

IT IS THEREFORE ORDERED that each party pay their own costs and attorney's fees.

/ s / HONORABLE ARTHUR T. ANDERSON

JUDICIAL OFFICER OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/ssc/sschome.html>.