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02/27/97 PAUL J. CROPPER PETITIONER AND RUTH L. DAY

FAMILY COURT OF DELAWARE, NEW CASTLE

February 27, 1997

PAUL J. CROPPER, PETITIONER, AND RUTH L. DAY, RESPONDENT.

James, J.

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The opinion of the court was delivered by: James

Petition For Visitation

Motion For Psychological Evaluations

James, J.

This is the Court's decision with respect to the motion of petitioner, Paul J. Cropper ("Father"), for an order requiring the psychological evaluations of respondent, Ruth L. Day ("Mother"), and the two minor children of the parties, Timothy Joseph Cropper, born December 24, 1979, and Kristina Joan Cropper, born August 16, 1983. The motion was filed for discovery purposes with respect to Father's pending petition for visitation of these two children.

Mother filed a response to Father's visitation petition which asserted that: Timothy, age 17, had absolutely no desire to have contact with Father and, at his age, should not be ordered by the Court to do so; and Kristina, age 13, was only 14 months old when she last had visitation with Father, has no recollection of him, nor any desire to have contact with him and, in Mother's opinion, such contact would be potentially emotionally harmful to Kristina. Mother also noted that Father was found by Judge Wakefield in his May 14, 1985 decision to have molested the oldest daughter of the parties, Julie, when she was five years of age. Further, Father was convicted in 1982 of sexual misconduct against Mother's sister when that sister was between 11 and 14 years old.

This was the case David's lawyer, Mr. Bostic was referring to regarding Dr. Romkowski being in favor of visitation with a father seeking visitation with his kids after being previously convicted of sexual misconduct of the young sister of his children's mother and possibly their eldest daughter according to mother. (found by Judge Wakefield).

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Mother also filed a response opposing Father's request for the psychological evaluations of Mother and the children. In summary, Mother's response reviewed the previous orders of this Court by three separate Judges which denied Father's prior visitation petitions, before concluding that:

Viewing the Court's prior rulings as a whole, the requirement is that Father acknowledge his prior wrongdoing, seek professional therapy and obtain a recommendation that he is no longer a danger to children if permitted to visit.

▷ The parties filed a stipulation signed by the Court which permitted the parties to bypass the mandatory mediation of Father's visitation petition so that the matter could be forwarded to judicial scheduling. Due to the untimely death of the last Judge assigned to this case file, the visitation petition has been assigned to this Judge.

At a procedural teleconference held with counsel on November 8, 1996, the Court agreed to initially rule upon the pending discovery motion after holding a hearing limited to the testimony of Dr. Romirowsky, a psychologist who has been counseling Father. At that hearing on January 28, 1997, counsel stipulated that Dr. Romirowsky was qualified as an expert to render his professional opinion regarding issues pending before the Court. Dr. Romirowsky testified that he was initially contacted by Father in September of 1996 for purposes of undergoing a mental health evaluation in light of earlier incidents which are contained in the Court file. Following this mental health evaluation, Father requested that Dr. Romirowsky make a determination as to whether Father needed ongoing counseling. Finally, Father requested that Dr. Romirowsky make a determination as to whether contact by Father with his minor children would be in their best interests.

Father first met with Dr. Romirowsky on September 11, 1996, and has had a total of five sessions, the last being on January 24, 1997. Father was interviewed by Dr. Romirowsky and subsequently asked to submit to a full battery of psychological testing to determine his current mental health. Father was agreeable to all requests of Dr. Romirowsky. For purposes of securing a factual background, Dr. Romirowsky reviewed documentation regarding Court proceedings and from the various agencies that have been involved with the family.

Based upon this psychological evaluation of Father, and a review of the documentation noted above, Dr. Romirowsky testified that, in his professional opinion, Father did not at this time represent a threat or danger to his minor children as had been previously determined several years ago. Dr. Romirowsky further testified that Father does not need individual therapy at this time. Nevertheless, if any form of visitation is ordered by the minor children with Father, Dr. Romirowsky testified that both Father and the minor children should participate in ongoing counseling to assist in their efforts to reconnect their relationships.

Dr. Romirowsky testified that he was presently unable to form an opinion as to whether contact by Father with his minor children would be in their best interests at this time. When asked what additional information he would require in order to form an opinion on this critical issue, Dr. Romirowsky responded that it was essential for him to have an interview with Mother to learn why she feels it would or would not be in the best interests of the children to have contact with Father. Then, Dr. Romirowsky indicated that a joint meeting attended by Mother and the children would be required to discuss the subject of contact by the children with Father, presumably to determine how the relationships of the children with Mother impacts upon any decision for them to have contact with Father. Finally, Dr. Romirowsky indicated that he would need to have separate interviews with the

minor children to discuss each of their thoughts and concerns regarding contact with Father. If these interviews with Mother and the children convinced Dr. Romirowsky that they did not believe contact with Father would be in their best interests, then he would ask the children to undergo approximately two hours of psychological testing to objectively explore the basis for their reluctance to establish a relationship with Father, instead of just relying upon his initial interviews with Mother and the children. Such a testing procedure would not, in the opinion of the psychologist, create any danger for the children or be stressful to them. After completing his interviews with Mother and the children, as well as any psychological testing of the children required as a result of these interviews, Dr. Romirowsky testified that he would be able to form a professional opinion as to whether contact by Father at this time would be in the best interests of the children.

On cross-examination by Mother's attorney, Dr. Romirowsky conceded that while it has been his experience that the proposed testing procedure for these children has not been stressful for other children who have submitted to such a procedure, he could not state for sure that these particular children would not be upset by the experience. He explained that his meetings with Mother and the children would not be for the purpose of providing therapy for Father; instead, such interviews would only be to determine whether visitation by Father would be in the best interests of the children. In this regard, Dr. Romirowsky indicated that while the visitation petition only related to the two minor children of the parties and not the 18 year old daughter, Julia, he believed that all three children should be given the opportunity of discovering a relationship with Father. Dr. Romirowsky did indicate that if psychological testing was necessary after his

interviews with Mother and the children, such testing could be performed by another psychologist. If this procedure was adopted, then Dr. Romirowsky's contact with Mother and the children would be limited to initial interviews with them.

Dr. Romirowsky also conceded that Father refused to admit that he engaged in inappropriate sexual behavior with their oldest child, Julia, because he did not feel he was guilty of this misconduct. However, Father did acknowledge to Dr. Romirowsky his conviction of sexual misconduct against Mother's sister when the sister was a minor and expressed genuine remorse for that incident.

Dr. Romirowsky testified that although he has counseled Father regarding patterns of appropriate parenting behavior, in his opinion, he does not believe Father needs ongoing therapy at this time. However, Dr. Romirowsky conceded that the field of psychology is not precise enough to guarantee Father's future behavior would be appropriate in all respects with regard to the children.

At the Conclusion of the hearing on Father's discovery motion, counsel requested a follow-up teleconference for the purpose of presenting oral argument on Father's discovery motion, which was held on February 4, 1997. The day before this conference, Mother's counsel delivered to the Court and counsel for Father the February 3, 1997 affidavit of Richard Kingsley, M.D., Chief of the Division of Psychiatry at the DuPont Hospital for Children. This affidavit revealed that Kristina has been a patient of Dr. Kingsley since January 25, 1995, for treatment of Attention Deficit Hyperactivity Disorder ("ADHD") as well as issues relating to possible visitation or other contact with Father. Dr. Kingsley stated in his profession opinion as follows:

- (a) It would be extremely harmful emotionally for Kristina to be forced to have contact with a psychologist or psychiatrist acting on behalf of or otherwise identified with her father;
- (b) It would be less traumatic, although still upsetting to her, if the professional in question were a neutral individual designated by the Court.

Counsel for Mother acknowledged at the teleconference that Dr. Kingsley was not actually the primary therapist for Kristina regarding visitation issues involving Father. Further, Dr. Kingsley indicated that his professional opinion was actually based upon consultations he has had with Jonathan F. Baylin, Ph. D., a psychologist who also has been treating Kristina for ADHD and issues relating to possible visitation or other contact with Father. Mother's attorney advised the Court that he had not been able to secure Dr. Baylin's affidavit in time for the teleconference. The Court deemed it appropriate to request Dr. Baylin's affidavit on this subject since Dr. Kingsley had relied upon communications with Dr. Baylin in forming his professional opinion. Counsel for Mother then agreed to submit this additional affidavit which was received by the Court on February 7, 1997.

Dr. Baylin's affidavit revealed that Kristina has been a patient of his since December 1, 1994, approximately two months prior to Dr. Kingsley's involvement. *fn1 Dr. Baylin stated, based upon his professional contract with Kristina, as follows:

- (a) She has bonded with her mother's present husband, Christopher Day, who is now in fact her psychological father;
- (b) That she has extremely negative feelings toward being forced to have any contact whatsoever with her biological father or anyone associated with him. It would be less traumatic, although still upsetting to her, if the professional in question were a neutral individual designated by the Court.

Dr. Baylin concludes that in his professional opinion:

- (a) It would be extremely harmful emotionally for Kristina to be forced to have contact with a psychologist or psychiatrist acting on behalf of or otherwise identified with her father;
- (b) It would be less traumatic, although still up setting to her, if the professional in question were a neutral individual designated by the Court.

Before concluding the teleconference, counsel for Father indicated that Father would be willing to meet with both Dr. Kingsley and Dr. Baylin for interviews and testing on visitation issues with Kristina, if requested to do so.

The statute controlling Father's visitation petition is 13 Del.C. § 728 (a), which states:

The Court shall determine...a schedule of visitation with the [non-custodial] parent, consistent with the child's best interests and maturity, which is designed to permit and encourage the child to have frequent and meaningful contact with both parents unless the Court finds after a hearing, that contact of the child with 1 parent would endanger the child's physical health or significantly impair his or her emotional development. The Court shall specifically state in any order

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denying or restricting a parent's access to a child the facts and Conclusions in support or such a denial or restriction (Emphasis supplied).

Thus, the Delaware Code creates a presumption in favor of visitation by the non-custodial parent, with the burden on the custodial parent to prove that such visitation would "endanger the child's physical health or significantly impair his or her emotional development." *fn2

In determining if the minor children should have contact with Father, the Court must consider the seven factors enumerated in 13 Del.C. § 722, *fn3 which are used to determine a child's best interests. For the Court to properly rule upon Father's visitation petition, it is essential for the parties to present evidence on these factors. Since the psychological evaluations of Father, Mother and the minor children will provide both important and relevant information regarding several of the seven statutory factors, the Court shall grant Father's discovery request on the following terms and conditions:

1. Mother and the minor children shall submit to interviews with Dr. Romirowsky as he has requested.
2. Should the results of these interviews with Mother and the children indicate that one or both of the minor children do not wish to have any contact with Father, then the children shall submit to appropriate psychological testing suggested by Dr. Romirowsky.

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3. The psychological testing of the children noted in paragraph 2 above shall be performed by Dr. Romirowsky if agreeable to the parties or, if requested by Mother, by another licensed Delaware psychologist agreeable to the parties and Dr. Romirowsky, with the results shared with Dr. Romirowsky, the parties, and counsel.

4. Father shall submit to interviews and testing by Dr. Kingsley and Dr. Baylin if requested to do so in order to provide them with the opportunity of securing essential information on the issue of the best interests of the minor children.

When the Court is advised by counsel that all discovery has been completed, a teleconference shall be held for the purpose of scheduling Father's visitation petition for a hearing.

IT IS SO ORDERED.

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