

IN THE DISTRICT COURT OF MIAMI COUNTY, KANSAS

In the Interest of:)
)
SYNTHIA KAYE TRAGER,) Case No. 2017-JC-000035
)
Date of Birth: 04-25-2003.)

**TRANSCRIPT OF DISPOSITION & HEARING UPON MOTION FOR
CHANGE IN GUARDIAN AD LITEM**

PROCEEDINGS had before the Honorable AMY L. HARTH, Chief Judge of the Sixth Judicial District of the State of Kansas, at the Miami County Courthouse, Paola, Kansas, on the 5th day of February, 2018.

APPEARANCES

Petitioner, State of Kansas, appeared by and through MS. ELIZABETH SWEENEY-REEDER, Miami County Attorney, Room 300, Miami County Courthouse, 120 South Pearl Street, Paola, Kansas 66071.

Natural Mother, Chantal Best, appears in person and by and through counsel, MR. KEVIN STUART CAVANAUGH, 7111 West 98th Terrace, Suite 140, Overland Park, Kansas 66212.

Natural Father, Sun Trager, who was not present, appeared by and through counsel, MS. GERI L. HARTLEY, Nicholson, Dasenbrock & Hartley, L.C., 26 West Peoria Street, Paola, Kansas 66071.

Minor Child, Synthia Kaye Trager, appeared in person and by and through Guardian ad Litem, MR. RICHARD M. FISHER, JR., 549 Main Street, Osawatomie, Kansas 66064.

JUDY JECK
Official Court Transcriber
Sixth Judicial District
State of Kansas

P R O C E E D I N G S

**(Hearing commenced on the 5th day of February, 2018,
at the Miami County Courthouse, Paola, Kansas.)**

MS. SWEENEY-REEDER: State appears by Elizabeth Sweeney-Reeder, Miami County Attorney.

MR. FISHER: Judge, the minor appears in person and by and through her Guardian ad Litem, Richard M. Fisher, Jr.

MR. CAVANAUGH: May it please the Court, the Natural – Natural Mother, Chantal Best, appears in court and with her attorney, Kevin Cavanaugh.

MS. HARTLEY: If it please the Court, the Natural Father appears not, but by and through counsel, Geri Hartley.

THE COURT: Counsel, we're on for a disposition. We're also on for a motion, I think, for change in Guardian ad Litem. We dealt with an emergency motion to change placement last week.

Mr. Cavanaugh, by now you may know that motion was granted. I had some reservations in doing so. DCF did not appear for that motion and was unable to indicate where in the investigative process that was; so I didn't have that information so (indiscernible). So that motion was granted.

So next I'd like to address your motion regarding the Guardian ad Litem.

MR. CAVANAUGH: Thank you. And may I also make a brief statement on behalf of my client for – on the issue of placement?

THE COURT: Yes.

MR. CAVANAUGH: Okay. The reason why Mother and her daughter want a change of Guardian ad Litem is that in these kinds of circumstances -- And I know the Court is well aware of this, that children are very vulnerable, they're confused, they don't understand the situation and they don't understand what's going to happen to them and the adults around them are not necessarily helping them understand that. The person who is most likely and responsible for helping them understand what the situation is and what is in their best interest is their Guardian ad Litem.

And she feels like she has since the beginning of this case never -- never met or really spoken with her Guardian ad Litem about what her concerns are, what her fears are. This is just somebody that she doesn't know that appears in court and talks about her and talks for her and doesn't know what she's going through or what she wants or -- to get some sort of comfort level with the Court. That's the person who really should give her some sort of, you know, comfort and calm about what the process is, what's going on or what the Guardian ad Litem is working toward that would be in her best interest. She doesn't know any of that. She's not at this point comfortable at all with --

THE COURT: How do you have that information?

MR. CAVANAUGH: This is what she's told her mother and her mother's told me.

THE COURT: Okay.

MR. CAVANAUGH: So --

THE COURT: But you have not talked to the child?

MR. CAVANAUGH: Oh, no, no.

THE COURT: Okay.

MR. CAVANAUGH: And -- And so it's -- it's not a -- I'm not tryin' to, you know, indict Mr. Fisher or the guardian ad litem system. It's just that they have not connected. It's -- I think it's important. It's crucial for the Guardian ad Litem to connect with his client, someone that he's representing the best interest of; and that has not happened here. I think it would aid her tremendously to have someone else at this point, just a reshuffling of the deck, if you will. And so that is for her and for her mother, I think, what would -- what would be best.

THE COURT: Well, her mother's best interests isn't the issue here, though; right?

MR. CAVANAUGH: No. No, her mother's best interest isn't the issue; but her mother is concerned about what's in her daughter's best interest. And if a Guardian ad Litem is appointed for her daughter's best interest, she would hope, as I think would think any mother would hope, that the Guardian ad Litem that's appointed will be working with their client, his client, to understand the child and what her fears and concerns are, what's going on with her, what might be in her best interests other than just remotely what he thinks or what he would represent to the Court as her best interest without even talking with her or getting a comfort level.

So I would hope that the Court would change Guardian ad

Litem at this point to someone who will meet with Synthia, perhaps a woman attorney, someone like that. I –

THE COURT: Are you alleging some kind of misconduct by Mr. Fisher?

MR. CAVANAUGH: Oh, no, no, no, no. It's just that if – if the child at this point is, you know, reserved about talking with anyone and, you know, her Guardian ad Litem is a man, maybe she would be comfortable with a woman. If nothing –

THE COURT: Well, I'm confused about that because she was residing with an adult male and not her mother; so I'm not sure the relevance of the gender of the Guardian ad Litem. But go ahead.

MR. CAVANAUGH: It's just -- It's just a suggestion. I may not -- You know, I -- I don't think it's incumbent on the Court to appoint, you know, one over the other; but I just mention that to the Court if that would be a, you know, part of a different Guardian ad Litem. And so that, as well as -- Well, at this point, because of all of the things that have happened with KVC and -- I've listened to a lot of discussion between the child and KVC about what they were doing and saying they were not doing and so forth.

THE COURT: So you've been in meetings with the child and KVC?

MR. CAVANAUGH: No.

THE COURT: No?

MR. CAVANAUGH: No, I have not. I've heard --

THE COURT: So what discussion have you had between the

child and KVC?

MR. CAVANAUGH: I haven't had any discussion with anyone. I'm talking about if I -- I have heard audio recordings of discussions that the child and KVC have had that are --

THE COURT: So, wait.

MR. CAVANAUGH: --certainly concerned Mother more and Mother feels like --

THE COURT: Wait. I'm sorry. Someone's audio taping contact between KVC and the child?

MR. CAVANAUGH: There was a previous audio tape.

THE COURT: Okay. Who's audio taping meetings between the child and the case worker?

MR. CAVANAUGH: I think the child's phone was on when -- when she -- It --

THE COURT: Okay, the child is doing that?

MR. CAVANAUGH: Yes.

THE COURT: Okay, go ahead. That's my question.

MR. CAVANAUGH: All right. So Mother feels strongly and she wants to tell the Court in the strongest and most passionate terms possible that she feels that the best interest of Synthia would be to go home directly with her mother now; and that's what her mother's urgent plea is to the Court. She understands that there's a process that the Court must go through and that that is part of the -- the system and so forth; but she really feels like that this child would turn around quickly if she were able to go home with her mother.

So her mother would make that plea in testimony to the Court if the Court would allow it. But I'm making that plea to the Court now on her behalf. So she just feels like the – the process of bringing Synthia around now would be better. She's been bounced from school to school to school. She's not even goin' to school right now. She spends every night in a different house right now I'm told.

THE COURT: Well, that's -- She was enrolled in home services and school, but I dealt with the emergency motion last Thursday and I asked your client, "Do you want her moved after it was stated on the record that all these services were in place?" And your client said yes. So even though she was plugged in with a therapist, with a case manager and a school district, based on those allegations of abuse in your motion, I moved that child.

MR. CAVANAUGH: I understand.

THE COURT: So I -- It's a little hard to fall back on that argument.

MR. CAVANAUGH: Okay.

THE COURT: Okay, anything else on the – with respect to the request to change Guardian ad Litem?

MR. CAVANAUGH: Nothing further.

THE COURT: Mr. Fisher?

MR. FISHER: Judge, I would advise the Court, Your Honor, that yes, I spoke with Synthia when this Petition was filed. I don't think Mother was present at the hearing. And I had a social worker present with me and explained the procedure to her and how I'm

her Guardian ad Litem, that I make recommendations to the Court that I believe is in her best interests and she may not agree with that. So she understands that, Judge. At the last hearing we had when she showed up to Court, Mom was here. Counsel requested a trial setting, an adjudicatory setting. I advised Synthia that we are set for trial now, so --

And I think there was one instance where she wanted to see me and I had other hearings, so DCF checked and told her that I had -- or a Kaw Valley worker checked and told her that I had other hearings. And Judge, I was going to advise Kaw Valley to have her come to my office so we could discuss the dispositional hearing and a case plan, and that was set up. It was going to be last Friday, but Thursday the Court had moved her from that placement and, evidently because they haven't found placement for her, I knew it was going to be very difficult for her to get to my office. So --

THE COURT: So you had a meeting with her Friday and I moved her Thursday?

MR. FISHER: Well, no. I was going to, Judge. We were trying to set that up; but evidently you moved her Thursday and I -- In talking with Paul, the social worker, after the hearing it's goin' to be very difficult to find her place, so they didn't know what was going to happen, so that was goin to -- That was all up in the air, so --

But that's all I can say, Judge, in terms of the motion. I -- I'd leave it to the Court, whatever the Court wants to do, but I

would advise the Court that I have spoken with her. This whole case concerns me, Judge, the reports I've been getting. The foster parents, the family she was with before the Court moved her, they kept me updated. I got emails from Kaw Valley and kept me updated as to Synthia's behavior, what was going on in school, the things that were set up for her benefit and her best interests in terms of the therapy and the IEP, that sort of thing and going to school. But now that's -- that's now for naught. So we're back to square one, so -- But I just want to advise the Court of that and I --

There's been issues, too, about Synthia have phones. Not supposed to have phones. Contacting her mother. Not supposed to be contacting her mother. That sort of things. So that's a lot bein' on Synthia's behavior as to why she's been moved. I -- I -- Evidently, I think Mom thinks that -- And Mom had testified at the adjudicatory hearing how it was very difficult to control Synthia. That's why she evidently placed her down here in Paola.

Otherwise, Judge, I'll leave it up to the Court, but that's all I can say to that motion. I don't know what the State's position is, but --

THE COURT: Thank you, Mr. Fisher.

Miss Sweeney-Reeder, I made you sit back down. What did you want to say? It was about the (indiscernible).

MS. SWEENEY-REEDER: Well, Your Honor, not specifically regarding the motion, but I did want to let the Court know that

Carol Bob Davis is out in the hallway and he was looking in. Synthia was looking out. She has been laughing and making faces the entire time this proceedings is going on. I seem to think that the child thinks this is a big game, which it's not. I can look at her right now and see her face where she's doing things, Your Honor. He –

Are we talking now about the review hearing or just the –
With regards to the review hearing, Your Honor, we do believe that reintegration should still be the only goal. I think there should be a psychological evaluation for Mom and Synthia. Mom refused to sign some school (indiscernible) that were necessary. She has indicated that she was not going to be signing things until she talked to her attorney.

I'm not sure if the Court had a chance to review the report and then the supplemental that also came on Friday; but it looks like with regards to the report, she got kicked out of Villages for sexually inappropriate behavior and for skipping school. She's had a cell phone and that had been taken away from her, but – and she was using it to contact her mother when they're not supposed to be having contact. Incidentally, this phone was the same phone that the DCF worker gave back to the mother when Synthia was placed in DCF custody. It's unknown how the phone was returned to Synthia, but KVC suspects that happened during the weekend visit with the grandmother.

She has been moving around because she – she had to be moved, so she went to -- Mom's request. That's why she's been

bouncing from place to place now.

Your Honor, I'd also like to point out that it -- Synthia had a positive screen for a sexually transmitted disease that was, it appears, while she was at The Villages. The report outlines --

THE COURT: She got it at The Villages or she was tested there?

MS. SWEENEY-REEDER: She was tested at The Villages, Your Honor. The -- That was October 21st. The report outlines several pages of incidents that The Villages had with her. In the update that was sent that I found interesting, we had Synthia's RADAC evaluation and that assessment was on January 30th, so last week. And in there, the assessor writes that Miss Trager is currently residing with foster parents in Topeka, Kansas. She claimed the home is safe and supportive of recovery, which is directly contrary to what was represented to the Court regarding the foster home just a day or two prior to the hearing and the emergency motions were filed on January 25th. This evaluation was done on January 30th.

Also, Your Honor, attached to that report are numerous text messages sent from the mother to the case worker that are not conducive to reintegration and in the spirit of getting -- getting this child home, doing the case plan that needs to be done. They are borderline abusive, Your Honor, and I will be requesting KVC to continue to keep these communications and also date them. I would expect that the mother's attorney will talk with her about perhaps this is not the best foot to be placing forward to the Court

and – and in the best interests of her child in trying to get her child back. She needs to be working her case plan. She needs to be doing things to provide her daughter a safe place and certainly Mr. Bob – Carol Bob Davis being here today is not going to be doing that.

THE COURT: I'll be letting his probation officers know.

Mr. Cavanaugh, with respect to disposition today, recommendations, objections?

MR. CAVANAUGH: Again, I would urge the Court to allow the child to go home with Mother. I think –

THE COURT: Well, okay, so let's back up a step about that. You've seen the report.

MR. CAVANAUGH: Yes.

THE COURT: So you dispute that your client's not taking (indiscernible)?

MR. CAVANAUGH: I don't dispute that.

THE COURT: Okay. So she's not willing to follow my court orders, but I'm supposed to return the child; is that what I understand your request to be?

MR. CAVANAUGH: Yes.

THE COURT: Okay. Fair enough. Go ahead.

MR. CAVANAUGH: That the daughter's in a very complicated situation and she – because of her own personality and emotional makeup at this point, it's difficult for her to do the things that she is supposed to do and is required to do among strangers and, you

know, in constantly shifting environments and so forth. I think Mother believes strongly that the best chance that she has to turn her life around and move forward and – is if she is with her mother on a constant basis. Unfortunately, Mother lives in Missouri, but that would -- Mother really feels like that's what's in Synthia's best interest, that she comes home and lives with her mother. So my understanding through Mother is that Synthia would like to do that; but other than that, you know, she is being buffeted along on this kind of rough sea of child-in-need-of-care. So Mother, if she were allowed to testify, would tell you all of the reasons why she thinks that it would be best for Synthia to come home with her.

THE COURT: What message is the child supposed to take away when a parent refuses a court order? Why should Synthia think she has to follow rules?

MR. CAVANAUGH: I understand what the Court is saying. It's a -- It's a confusing message and so –

THE COURT: Certainly. Thank you, Mr. Cavanaugh.
Miss Hartley?

MS. HARTLEY: Well, Your Honor, I've had no contact with the Natural Father to be able to advise the Court of any of his positions on either disposition or reintegration proceeding forward. It's, I believe, contrary to his interests.

THE COURT: Mr. Fisher, before I rule on the motion, do you have any recommendations?

MR. FISHER: Judge, I would concur with those

recommendations made by the State.

THE COURT: All right. With respect to the motion to remove the Guardian ad Litem, that motion is denied. I do not find good cause. I'm satisfied with the representations of the Guardian ad Litem with respect to his contact with his client up to this point.

I do have female guardians ad litem available. I will tell you –

Miss Trager, put your hand down.

MINOR CHILD: (Indiscernible comment.)

THE COURT: Not right now.

MINOR CHILD: (Indiscernible comment.)

THE COURT: I'm talking right now. Yeah, sit still.

Mr. Fisher's going to meet with his client, which apparently was going to happen on Friday, but didn't get to. He's going to meet with his client. They're going to have a conversation and then he is going to talk to her.

Mr. Fisher, if you would, about her contact with the Court and different ways she can do that.

MR. FISHER: Yes, Your Honor.

THE COURT: With respect to disposition today, the Minor Child is going to remain in the care, custody and control of DCF with recommended placement out of home. All contact with any family member at all will be supervised by DCF or their contractual designee. Previous orders with respect to parenting will remain in effect.

I want to be clear and, Mr. Cavanaugh and Mr. Fisher, you can deliver this message to your clients however you think it appropriate, this is not the first time we have had a teenager and a parent who don't want to follow court orders. I would remind everyone I tried this case. I heard the evidence. This is not a stipulation. I understand no one's happy with the outcome here. But this is where we are. This child will not be returned home until I am satisfied that she is going to be safe there.

And I cannot be satisfied there, Mr. Cavanaugh, until Mom has cooperated.

And Mr. Fisher, until your client has cooperated.

So take that in the for-whatever-it's-worth category. I'm going to be here tomorrow. I was here 10 years ago. Maybe I won't be here in 10 years, but I can wait a really, really long time because, based on the evidence that I heard at trial, I have no reason to believe, especially in light of Mr. Davis' appearance in this courthouse today, that your client won't turn right around and put her back where she was, Mr. Cavanaugh, or perhaps in a worse situation.

So you can all take that in the for-whatever-it's-worth category. There will be no unsupervised contact with any friend or family member at all. Not by phone. Not by email. Not by Facebook. Not in person. Not anything.

DCF if you violate my order, I will issue a citation to show cause. So let's be clear about that.

Miss Trageser (sic), let's you and I be clear about this. If you don't want to follow court orders, that is your business, but I will not even consider returning you to your mother's home if you won't do that. It's that simple.

And Miss Best, I will tell you the same thing. If you will not cooperate, your child will not be returned home because I cannot be certain she will not be in danger in your home.

So we're going to have a review hearing on April 30th, Mr. Cavanaugh, if you are available at 3:15. Does that work for you? The rest of my lawyers should be available.

MR. CAVANAUGH: I think -- I think I'm in a three or four-day trial starting that day.

THE COURT: Okay. Let's move you then to -- I do these Monday, Mr. Cavanaugh. I could see you all again -- I don't do it every Monday.

MR. CAVANAUGH: Second week of May?

THE COURT: Tell me-- What were you going to say?

MR. CAVANAUGH: May 7?

THE COURT: I don't have a CINC docket that day.

MR. CAVANAUGH: April 23rd?

THE COURT: I'm in Bourbon County that day.

MR. CAVANAUGH: Well, then the 14th? What -- What days are your CINC dockets?

THE COURT: I could day it May 14th if that works for you.

MR. CAVANAUGH: Yes.

THE COURT: Does that work for you?

MR. CAVANAUGH: Yes.

THE COURT: I could also do it April 16th, which would be sooner.

MR. CAVANAUGH: The 16th works, as well.

THE COURT: In the afternoon?

MR. CAVANAUGH: Yes.

THE COURT: Okay. April 16th at 2:15. That's going to be for a review.

I've approved the case plan as written. Reintegration is the only permanency goal. I can certainly reconsider that and I will tell you all I did today. The other thing I would add is –

Mr. Cavanaugh, I don't want to keep this child in custody. That is not -- That is not the goal here. But I can't return her if I'm not sure she's safe.

MR. CAVANAUGH: Could I have one point of clarification?

THE COURT: Yeah.

MR. CAVANAUGH: On your no contact, --

THE COURT: I said supervised.

MR. CAVANAUGH: Supervised, yes. But if -- Can it still be that if my client passes the two UA's that she would have some unsupervised time with her daughter?

THE COURT: No. That contact's going to be supervised. But she's not going to have any until she passes the two clear UA's upon request consecutive.

MR. CAVANAUGH: And we decided that that was at 2:15
and –

THE COURT: Yes, if that works for you. The other attorneys
are supposed to be available cause they're on contract. Does that
work?

MR. CAVANAUGH: Yes.

THE COURT: All right. I'll see you back here then. Thank
you.

(Whereupon, the hearing was adjourned.)

C E R T I F I C A T E

STATE OF KANSAS)
) SS:
COUNTY OF MIAMI)

I, JUDY JECK, Official Court Transcriber for the Sixth Judicial District of the State of Kansas, do hereby certify that the within and foregoing transcript contains all the evidence requested to be transcribed by me, and the rulings of the Court thereon, from the proceedings had in or at the hearing held February 5, 2018, in the foregoing cause in said court; that said transcript is a complete and correct transcription of the evidence requested to be transcribed from the official tape or digital recording made at the time of the proceedings, as indicated by the files and records of this court; that the cost of said transcript is \$70.00. (Computation: 20 pages @ \$3.50 per page.)

Dated this 14th day of March, 2018.



JUDY JECK
Court Transcriber

I, AMY L. HARTH, District Judge for the Sixth Judicial District of the State of Kansas, do hereby state that the tape recording from which this complete transcript was prepared is the official record made at the time of the proceedings had in the foregoing cause in said court; and that said tape or digital recording, constituting the official record, has been at all times in the custody and under the control of the Miami County District Court.

Dated this 14th day of March, 2018.

Original signed by:

AMY L. HARTH
AMY L. HARTH
District Judge