

[REDACTED]

Plaintiff

Vs.

[REDACTED]

ET AL

Defendant

* * * * *

IN THE

CIRCUIT COURT

FOR

HOWARD COUNTY

Case No. [REDACTED]

ENTERED

JUN 18 2008

CLERK, CIRCUIT COURT
HOWARD COUNTY

MEMORANDUM OPINION

The above captioned case comes before the Court on the Complaint for Custody of a Minor Child, [REDACTED], filed by the mother of the child, Plaintiff, [REDACTED]. Defendant, [REDACTED], is the father of [REDACTED] and also seeks custody of [REDACTED]. Co-Defendant and Counter Plaintiff, [REDACTED], seeks third party custody of [REDACTED] contending *de facto* parenthood. [REDACTED] is the paternal grandmother of [REDACTED]. [REDACTED] and [REDACTED] are married but living separate [REDACTED] in Maryland, with her parents, and [REDACTED] in Florida, with his mother [REDACTED].

Given the allegations of drug and alcohol abuse by the minor's father, [REDACTED] and the request for custody by a non-parent, the minor's grandmother, [REDACTED], the Court found it appropriate to appoint counsel for the minor. To that end the Court appointed [REDACTED] Esquire as counsel for [REDACTED] pursuant to Maryland Rule 9-205.1.

[REDACTED] and [REDACTED] were married on June 1, 2002. On April 1, 2005, [REDACTED] and [REDACTED] became parents when their son [REDACTED] was born.

[REDACTED] was delivered by emergency cesarean section and [REDACTED] developed

THE COPY TEST:
Margaret B. Haggins
CLERK

extraordinary medical problems. [REDACTED] experienced a health crisis so severe that she was generally hospitalized until July 21, 2007. The ordeal she endured required the removal of her small and large bowel, due to necrotizing fasciitis, and eventually to an intestinal transplant. [REDACTED] currently has an ostomy that could be reversed, however, the process would be elective. According to her transplant surgeon, Doctor [REDACTED], [REDACTED] has done "remarkably well" in her recovery and there is nothing about her medical condition that would impair daily living or decision-making. Doctor [REDACTED] indicated that [REDACTED] should make a normal recovery and that medically she is capable of caring for a three-year-old child. The transplant does require the use of certain immunosuppressant drugs for the rest of her life. The dosage of these immunosuppressant drugs is reduced over time and will probably be reduced further for [REDACTED] in six months. According to Doctor [REDACTED] will then be like any other person in terms of her ability to fight off any virus or infection. One of the immunosuppressant drugs has the potential to adversely effect the kidneys and could cause diabetes. Doctor [REDACTED] indicated alternative drugs were available.

As [REDACTED]'s medical problems mounted, [REDACTED] fell into his own crisis. Without [REDACTED] to temper [REDACTED]'s abuse of alcohol, [REDACTED] would become intoxicated everyday. Without [REDACTED] to manage the family budget, the family home was foreclosed upon and the family vehicle was repossessed. [REDACTED] developed a substantial cocaine problem and began abusing pain pills. The drug abuse was financed using certain 403B funds [REDACTED] had accumulated and by neglecting mortgage and automobile payments. During [REDACTED]'s medical ordeal, [REDACTED] was unable to manage any aspect of his life. [REDACTED] neglected to keep medical insurance payments

current and medical insurance was lost. When the family home was lost, ██████ took up residence with various other women. During this downward spiral, ██████ was, ostensibly, caring for his son ██████. In explaining his abuse of alcohol and illicit drugs, ██████ notes that he was drunk when he met ██████, drunk when he married her, and no one should be surprised that he would behave in the way he did. At one point ██████ had developed a four thousand dollar per month cocaine habit. The cocaine use was supplemented by marijuana and ecstasy.

When ██████ became ill ██████ came to Maryland from her home in Florida, to assist in caring for ██████ ██████ volunteered to stay in Maryland until she was no longer needed. After circumstances had stabilized to a degree ██████ returned to Florida. Although she had noticed that her son was not paying certain bills, she did not fully appreciate the extent of ██████'s alcohol abuse or illicit drug abuse. When asked why she did not notice the extent of the problem, ██████ explained that ██████ is a good liar. When ██████ ultimately telephoned his mother asking for help in dealing with his addiction and for help caring for ██████ ██████ arranged for a drug rehabilitation program in Florida and she assumed primary responsibility for ██████ in Florida. To say the least, ██████ has made an enormous and positive difference in the short life of ██████ ██████ has enjoyed a stable, loving relationship with ██████ She filled the substantial void in ██████'s life; a void created by ██████'s tragic medical condition and ██████'s near complete self-destruction. In addition, ██████ must be partially credited with the recent success ██████ has

enjoyed in avoiding drugs and alcohol. After all it was ██████████ that arranged for treatment.

The interest of parents in the care, custody, and control of their children is a fundamental liberty interest recognized by the Supreme Court. *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed. 2d 49 (2000); *Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388, 71 L. Ed. 2d 599 (1982); *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L. Ed. 2d 551 (1972); *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923). In *Troxel v. Granville*, Justice O'Connor noted that "[i]t is cardinal with us that the custody, care and nurture of the child resides first with the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Id.* at 66 (alteration in original).

In *McDermott v. Dougherty* the Court of Appeals was called upon to determine when and under what circumstances, where a fit parent and a third party both are seeking custody, it is appropriate to award custody to the third party. 385 Md. 320, 869 A.2d 751 (2005). Where the focus is on the standard to be applied when the dispute is between a fit parent and a private third party, the Court explained:

Where the dispute is between a fit parent and a private third party... both parties do not begin on equal footing in respect to rights to care, custody, and control of the children. The parent is asserting a fundamental constitutional right. The third party is not. A private third party has no fundamental constitutional right to raise the child of others. Generally, absent a constitutional statute, the non-governmental third party has no rights, constitutional or otherwise, to raise someone else's child. *Id.* at 353 (alteration in original).

Therefore, before the trial court may consider "the best interest of the child" test, the Court must find the legal parents unfit to have custody or extraordinary

circumstances. *Id.* Extraordinary circumstances are those that could result in serious detriment to the child if the child were to remain in the custody of the parents *Id.* at 374-75. Any third party seeking custody bears the burden of demonstrating exceptional circumstances. In *McDermott* a father who was required to be at sea for extended periods of time did not constitute extraordinary or exceptional circumstances to support awarding custody to a third party. 385 Md. at 325-326, 869 A.2d at 754 (2005).

Maryland does not recognize *de facto* parent status. *Janice M. v. Margaret K.*, No. 122, September Term 2006, 2008 WL 2080681 (Md. May 19, 2008). Put another way, a third party *de facto* parent enjoys no enhanced status and must establish that the legal parent is unfit or that exceptional circumstances exist. Only then will the best interest of the child test be applicable.

In determining whether exceptional circumstances exist the factors set out in *Ross v. Hoffman* are illuminating. 280 Md. 172, 372 A.2d 582 (1977). In the instant case, [REDACTED] had been away from his mother for more than two years. During that time [REDACTED] formed a strong attachment to his grandmother [REDACTED]. Immediately upon being physically able, [REDACTED] endeavored to effect the return of [REDACTED]. [REDACTED] is clearly intensely and genuinely interested in assuming her role as [REDACTED]'s mother. As a practical matter, [REDACTED] has resumed the role of mother; she has [REDACTED] with her every other two weeks, for two weeks, and she enjoys a strong motherly bond with [REDACTED] at this time. The Court is convinced that [REDACTED] would provide stability and certainty concerning [REDACTED]'s future. Her medical recovery has been remarkable according to her doctor. While she lacks stamina and is physically somewhat weakened by her surgeries, she is

determined to apply every effort possible to be a good mother. [REDACTED] has impressed the Court as an intelligent woman of strong character. She is clearly fit to be [REDACTED]'s mother, even if she will not ever be physically as strong as she once was. Being a mother is much more than being able to pick your child up and carry him around.

The issue is whether serious detriment to [REDACTED] would result if [REDACTED] were to be in the custody of [REDACTED]. After balancing the factors set out in *Ross v. Hoffman*, the Court does not find exceptional circumstances, 280 Md. 172, 372 A.2d 582 (1977). The Court does not believe [REDACTED] would be exposed to serious detriment in his mother's custody.

The Court notes that [REDACTED] has been critically important in [REDACTED]'s nurturing and development. At a time when his natural parents were unable to care for him, [REDACTED] was most fortunate to find himself in the care of a wonderful grandmother. Some debts can never be repaid, and [REDACTED] has eschewed any notion that her efforts require appreciation or thanks. In a real way [REDACTED]'s reward has been in the deep affection of [REDACTED] and in [REDACTED]'s development. [REDACTED] has been [REDACTED]'s rock and his parents should be eternally grateful. More importantly, [REDACTED] has set a standard of care for [REDACTED]'s natural parents to aspire toward. [REDACTED] promised that she would have a perfect package to turn over when [REDACTED] was healthy enough to resume her role as mother; that time has arrived.

At times [REDACTED] lacks insight and judgment. When [REDACTED] was being sentenced for a Driving While Impaired conviction in Anne Arundel County, [REDACTED] and her father attended the sentencing and informed the prosecutor of

[REDACTED]'s prior contacts with the criminal justice system. During the sentencing [REDACTED] was required to serve a short sentence in the Anne Arundel County Detention Center. Because [REDACTED] had spoken with the prosecutor, [REDACTED] instructed [REDACTED] to deny [REDACTED] visitation with [REDACTED]. [REDACTED] clearly did not appreciate that it was his behavior that resulted in punishment. More importantly, visitation should never be denied to a mother who has been separated from her child for an extended period of time simply because the mother informs a prosecutor of her husband's repeated experience in driving while intoxicated. In a similar way, [REDACTED] seems to lack any appreciation for the fact that when he would purchase cocaine and subsequently provide some of the cocaine to his friends for payment he was not just saving his friends a trip to the supplier; he was distributing controlled dangerous substances. Again, the Court notes that [REDACTED] has been alcohol and drug free for some months, and his progress is extremely important for [REDACTED]. However, [REDACTED] is quick to dismiss his past behavior and slow to take genuine responsibility.

Decisions concerning the custody of a child are among the most difficult a judge is called upon to make, and such decisions are of critical importance. Legal custody carries with it the obligation to make long-range decisions involving education, religious training, discipline, medical care, and other important matters of great significance. The paramount consideration in determining custody is the best interest and welfare of the child. *Krebs v. Krebs*, 255 Md. 264, 257 A.2d 428 (1969). In determining the best interest of the child the Court is guided by standards. *Montgomery County v. Sanders*, 38 Md. App. 406, 381 A.2d 1154 (1977). In considering the fitness of the parents in this

case, [REDACTED] impressed the Court as a stable, intelligent, and conscientious person. [REDACTED] has recently been successful in avoiding drugs and alcohol; however, his success in this area is of relatively short duration. When considering the character and reputation of the parties, the behavior of [REDACTED] over the past few years cannot be overlooked. Both parents are strongly interested in custody; however, the Court is convinced that [REDACTED] will maintain and promote natural family relations. While material opportunities for [REDACTED] are substantial as long as [REDACTED] resides with his mother, [REDACTED] impresses the Court as a very fiscally responsible person who will ensure material opportunities for [REDACTED]. [REDACTED] has never voluntarily abandoned her son. The Court is also confident that [REDACTED] will make a concerted effort to positively influence [REDACTED] toward a strong continuing relationship with [REDACTED] and [REDACTED]. In the final analysis, the Court finds that [REDACTED] is the more appropriate custodial parent.

6-17-08
Date

[REDACTED] Judge
[REDACTED]

Copies mailed 6/17/08

cc:

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[REDACTED]