

No. 26007, Kevin S.E., Sr. v. Diana M.E.

Workman, Justice, concurring:

While I agree with the result reached by the majority, I write separately to underscore the need for the lower court to give close attention to certain issues on remand. First, I must point out that this is a very close case as far as which parent should be the custodian of the minor children of the parties. This is clear from the fact that the family law master, after hearing twelve hours of testimony, made a determination that Appellant should be awarded custody of the children.

There is no question that Appellant cares for and is deeply interested in maintaining a close relationship with her children. Proof of her interest was borne out from the fact that she traveled all night long from Texas on the eve of the hearing before this Court, according to the guardian ad litem. Despite the mental illness suffered by Appellant, which apparently is in control and was much exacerbated by her marital problems as well as her relocation to a completely foreign area,¹ she appears capable of providing love and good care to her children. The “very positive Home Study”² conducted by the DHHR in 1998 when the children were residing with Appellant in West Virginia evidences the fact that Appellant is capable of caring for her children. Thus, I

¹The guardian ad litem observes in her report that, except for Appellee’s father, who “unfortunately died during the year before the . . . [parties’] separation, Appellee’s relatives were openly hostile and very unreceptive of Appellant. This hostility had to play a significant part in her unhappiness and possibly served as a trigger to her depressed mental state.

only reluctantly join the majority in upholding their affirmance of the circuit court's reversal of the family law master.

It is thus extremely distressing that Appellee, according to the guardian ad litem, may have undertaken efforts to alienate the children from their mother. The guardian ad litem stated in her report:

It is clear the children Diana and Kevin, Jr. are being alienated from their mother. . . Unless there is meaningful contact between the children and their mother soon, the alienation will likely be complete.

. . . .

[Appellee] appears to be unable to recognize the dangers of manipulation of the children to further his own ends. It is apparent to the Guardian this has occurred.

. . . .

In conclusion, the Guardian strongly recommends that whatever action the Court deems appropriate, it must be soon and it must give clear direction to the parties. Failing either, the relationship between these children and their mother will be irreparably damaged.

Given these serious concerns raised by the Guardian ad litem, it is imperative that the lower court must provide for close supervision of this case to assure that the children continue to have a right to a full relationship with their mother as well as their father. Of course, Appellant will have her seven-week period of summer visitation with her children in McDowell County where she now resides. Any evidence that surfaces concerning additional efforts on Appellee's part with regard to parental alienation should be swiftly addressed by the lower court in a firm fashion that leaves no question that such alienation

²This observation is made in the guardian ad litem's report.

will not be countenanced. Because the guardian ad litem saw convincing evidence that Appellee had already begun to be successful in his attempts at parental alienation, it would be advisable for the lower court to direct the guardian ad litem to continue to oversee this matter in the interest of encouraging and permitting the children to have a full, healthy, loving relationship with both parents.

Lastly, I commend the guardian ad litem, Jane Moran, for her responsiveness to this Court's appointment of her and for the insightfulness and compassion she has demonstrated in seeking to protect the interests of these children.