

STATE OF NEW HAMPSHIRE
Judicial Branch

Belknap, ss

Laconia Family Division

In the Matter of Martin Kurowski and Brenda (Kurowski) Voydatch

No. 2006-M-669

Decree on Pending Motions

Master recommends:

Parties and counsel and the Guardian ad Litem conducted a final hearing June 2, 2009 on pending motions. The Court heard testimony and received exhibits and after considering the evidence finds and rules as follows.

The time assigned for this hearing did not permit presentation of the financial issues. Counsel agreed that the remainder of the issues could be scheduled for further hearing, three hours with a record, as soon as the calendar would allow. See separate Order.

This Order will address the following issues: 1) whether Amanda will attend public school in the 2009-2010 academic year or continue to be home schooled; 2) whether there should be a modification of the Parenting Plan to which the parties agreed in the fall of 2008; 3) what procedure should govern the parties' decision whether Amanda should have chiropractic treatment.

The parties were divorced in 1999 in Massachusetts. Their Decree was registered in New Hampshire in 2002 after the Respondent Ms. Voydatch moved here with their daughter Amanda, now age ten. The parties stipulated to a schedule of routine parenting time in October 2002 (see Superior Court Index #22). They submitted a further

stipulated Parenting Plan in September 2008, in connection with a hearing conducted on pending Motions (see Index #78).

In their Parenting Plan (Index #77), the parties agreed to joint decision-making responsibility for Amanda, including a provision requiring them to engage a mediator or parenting coordinator if they disagree about major decisions for Amanda (Parenting Plan, paragraph A 1). The parties reserved for the Court the issue whether Amanda would attend public school for the 2009-2010 school year, or continue to be home schooled by Ms. Voydatch.

The parties also agreed to a schedule of residential responsibility for Amanda, subsequently modified on a temporary basis after Motion of the Guardian ad Litem (see Index #99 and #100).

Discussion

Home Schooling or Public School

The parties disagree whether Amanda should continue to be home schooled at her mother's residence or be enrolled in the Meredith public school district for the upcoming school year.

The Court considers that the parties have reasonably made efforts, through the Guardian ad Litem and otherwise, to resolve this issue by agreement, and therefore considers their obligation to do so discharged. The evidence compels a finding that the parties have had a long standing disagreement whether Amanda should be home schooled, and that their level of communication makes it virtually impossible for them to reach an agreement about this issue.

Amanda has been home schooled by Ms. Voydatch since first grade. At the time she began home schooling, the parties discussed the decision, and although Mr. Kurowski disagreed with the decision to home

school her, Ms. Voydatch understood the basis for his disagreement was his belief that home schooling prevented adequate socialization for Amanda with other children of her age. She did not understand him to object to the academic level or content of the home schooling curriculum.

The curriculum for Amanda's home schooling is reviewed and approved by the Meredith school district. Ms. Voydatch receives the course materials, which are regularly updated, from a private university where the materials are created by certified teachers. Amanda takes regular standardized tests to determine her academic achievement compared to her peers who attend public school. She is also evaluated annually (via interview and portfolio review) on her mastery of the course materials. Her current curriculum includes math, reading, English, social studies, science, handwriting and spelling, Spanish and bible class. This curriculum is comparable to the public school curriculum at the same age, except for the bible class. She does her work on a computer at her mother's residence, and her mother assists her by preparing the classes and being familiar with the content and being available while she does the work.

As part of his expanded parenting time, Mr. Kurowski supervises Amanda's home schooling work when she is with him during "school" hours. Amanda complained that he was not fulfilling her expectations about his participation, and the two of them resolved the issue by agreeing on rules about when and how he should participate.

Because the Meredith school district has a theater requirement, Amanda attends a theater class ("Patch the Pirate") which puts on plays and skits once per month. She fulfills the school district's music requirement by taking private piano lessons.

Beginning in January 2009, Amanda attended art, Spanish, and physical education classes in the Meredith public school. Statements

obtained from her teachers in March 2009 (Petitioner's Exhibit 1) reflect that she is an active participant in the classes and is adapting well and making friends and keeping up with the work. The Guardian ad Litem testified to an updated interview with the Spanish teacher who confirmed that Amanda seemed to get along and was a pleasant participant in the class, but also said that Amanda might feel more comfortable if she were a member of the class: she didn't have as much intimacy with the group as might be expected. Her art teacher commented toward the end of the school year that she had had a number of absences which resulted in unfinished projects.

Amanda was enrolled with a counselor after a February 2009 pleading (Index #95) in which Ms. Voydatch sought modification of the parenting schedule in part because Amanda was experiencing "extreme difficulty," and in which she alleged that "Amanda's emotional and mental health have been negatively impacted by the increased time with the Petitioner." The counseling was recommended by the Guardian ad Litem.

According to the Guardian ad Litem's Further Report and testimony, the counselor found Amanda to lack some youthful characteristics. She appeared to reflect her mother's rigidity on questions of faith. Amanda challenged the counselor to say what the counselor believed, and she prepared some highlighted biblical text for the counselor to read over and discuss, and she was visibly upset when the counselor (purposely) did not complete the assignment. The counselor was unable to conclude that there was supporting evidence for the claim that Amanda was experiencing extreme difficulty or that her emotional and mental health were at risk from extended contact with her father. The counselor concluded that Amanda would likely benefit from

continued and frequent contact with her similarly aged sibling (Mr. Kurowski's other daughter, age seven), and in the community.

The Guardian ad Litem concluded that Amanda's interests, and particularly her intellectual and emotional development, would be best served by exposure to a public school setting in which she would be challenged to solve problems presented by a group learning situation and by the social interactivity of children of her age. She also concluded that Amanda would be best served by exposure to different points of view at a time in her life when she must begin to critically evaluate multiple systems of belief and behavior and cooperation in order to select, as a young adult, which of those systems will best suit her own needs.

In her Further Report and testimony, the Guardian ad Litem echoed her previous concerns that Amanda's relationship with her father suffers to some degree by her belief that his refusal to adopt her religious beliefs and his choice instead to spend eternity away from her proves that he does not love her as much as he says he does. Amanda expressed these feelings to the counselor.

Mr. Kurowski testified that he and Amanda both enjoy his parenting time; Amanda particularly enjoys the contact with Mr. Kurowski's other daughter. They rarely discuss religion, although they have, several times in the past. He believes that exposure to other points of view will decrease Amanda's rigid adherence to her mother's religious beliefs, and increase her ability to get along with others and to function in a world which requires some element of independent thinking and tolerance for different points of view.

Ms. Voydatch acknowledges the strength of her own religious beliefs. She acknowledges that she shares those beliefs with Amanda, but denies that she pushes Amanda to believe the same things. In fact, she testified that Amanda told the counselor that she was upset with the

parenting schedule because her father "bombards her constantly" about her faith and won't let her alone about it. She testified that Amanda's wide variety of adverse symptoms are caused by her increased contact with her father. In response to Mr. Kurowski's testimony that Amanda enjoys her parenting time with him, Ms. Voydatch offers her observation that Amanda only reveals her true feelings and behaviors when she is at home with her mother, who is the "trusted adult" in her life.

Without considering Mr. Kurowski's testimony that Amanda enjoys her parenting time with him, the evidence gathered from the counselor and from the school teachers does not support the conclusion that Amanda is a deeply troubled child at risk for emotional and mental damage from exposure to her father. To the contrary, the evidence support a finding that Amanda is generally likeable and well liked, social and interactive with her peers, academically promising, and intellectually at or superior to grade level.

Despite Ms. Voydatch's insistence that Amanda's choice to share her mother's religious beliefs is a free choice, it would be remarkable if a ten year old child who spends her school time with her mother and the vast majority of all of her other time with her mother would seriously consider adopting any other religious point of view. Amanda's vigorous defense of her religious beliefs to the counselor suggests strongly that she has not had the opportunity to seriously consider any other point of view.

In considering the testimony of both parties, the Court has also considered Ms. Voydatch's testimony about statements made by the Guardian ad Litem during her investigation and during negotiations, statements specifically rebutted by the Guardian ad Litem's testimony after Ms. Voydatch had testified. The Court finds the Guardian ad

Litem's recollection and testimony reliable, and has considered this finding in analyzing the reliability of the rest of Ms. Voydatch's testimony.

The Court is extremely reluctant to impose on parents a decision about a child's education, which commonly emerges after sincere and thorough discussion between parents who are both committed to the child's growth and development. In the absence of effective communication between the parents whose case reflects a history of opposing opinions on a variety of issues, the Court is guided by the premise that education is by its nature an exploration and examination of new things, and by the premise that a child requires academic, social, cultural, and physical interaction with a variety of experiences, people, concepts, and surroundings in order to grow to an adult who can make intelligent decisions about how to achieve a productive and satisfying life.

The parties do not debate the relative academic merits of home schooling and public school: it is clear that the home schooling Ms. Voydatch has provided has more than kept up with the academic requirements of the Meredith public school system. Instead, the debate centers on whether enrollment in public school will provide Amanda with an increased opportunity for group learning, group interaction, social problem solving, and exposure to a variety of points of view. Considering the testimony of both parties and the Guardian ad Litem, and by the standard of a preponderance of the evidence, the Court concludes that it would be in Amanda's best interests to attend public school.

In reaching this conclusion, the Court is mindful of its obligation not to consider the specific tenets of any religious system unless there is

evidence that those tenets have been applied in such a way as to cause actual harm to the child. The evidence in this case does not rise to that level, and therefore the Court has not considered the merits of Amanda's religious beliefs, but considered only the impact of those beliefs on her interaction with others, both past and future. The Court declines to impose any restrictions on either party's ability to provide Amanda with religious training or to share with Amanda their own religious beliefs.

Parenting Plan

As indicated above, the current circumstances do not reflect a parenting environment which creates a significant risk of harm to Amanda's physical, emotional, or mental health, and therefore Ms. Voydatch's Motion for Modification of the Parenting Plan is denied to the extent that it seeks any dramatic deviation from the basic structure of the existing Orders.

The parties present different specific proposals for Sunday night overnights for Mr. Kurowski's parenting time, the number of weekends per month for his time, and provisions for the school summer vacation schedule. The Court considers these proposals by reference to Amanda's best interests.

Amanda will be attending school where Ms. Voydatch lives. It will be in her best interests to prepare for school on Sunday nights, both academically and emotionally, and also in her best interests to have a good night's sleep. While acknowledging Mr. Kurowski's testimony that Amanda seems to manage the driving time adequately, the Court finds that it is preferable to minimize her commute on Monday mornings before school.

To the extent that the routine parenting schedule applies during school vacations, no reason appears to deny Mr. Kurowski's request that Amanda stay overnight with him on Sunday nights during those times.

Mr. Kurowski seeks a routine schedule which would have Amanda with him on three out of every four weekends, but the Court concludes, in part based on the Guardian ad Litem's conclusions and recommendations, that Amanda should have generally equal exposure to each parent for her weekends, particularly if Ms. Voydatch will not be home schooling Amanda. Assigning the fifth weekend of those months with five weekends to Mr. Kurowski is an adequate response to assignment of the majority of residential responsibility for Amanda to Ms. Voydatch.

Each party proposes a modification of the existing Orders on school summer vacations established by the November 2008 (Clerk's date) Parenting Plan. The Court finds each party's proposal to be a variation on a theme, with no obvious corresponding increased benefit to Amanda, and therefore declines to modify the existing Parenting Plan as to the summer schedule.

To the extent that either party's current proposed Parenting Plan suggests a modification of the existing Orders not specifically addressed by this Order, the request is deemed either insufficiently pled (with corresponding lack of adequate notice) or not more consistent with Amanda's best interests than the existing Parenting Plan.

Chiropractic Treatment

Amanda received chiropractic treatment beginning a few years ago for pain in her hip and lower back. The parties disagree whether she

should continue: Mr. Kurowski feels the treatments are unnecessary and Ms. Voydatch feels the treatments are helpful.

The written evidence submitted from Amanda's primary care physician and from a consulting orthopedic physician confirm that the treatments are not medically necessary ("elective and optional" per Dr. Hennig) but are providing Amanda with some benefit (per Dr. Prescott).

This is not only an area in which there is room for disagreement among physicians and specialists, but an area in which there is room for reasonable disagreement between parents, even parents who have a high level of communication and cooperation.

There is no basis for the Court to conclude that the parties should be ordered to provide chiropractic treatment for Amanda, nor is there a basis to assign to either parent the right to determine if she should continue such treatment. Both parents have her interests at heart, and neither parent is likely to do anything intentionally to adversely affect her health. Both parents are educated and competent to consult with treating physicians and with the chiropractor. The parties require a protocol to assist them in communicating before any significant decisions are made.

For the foregoing reasons, the Court orders as follows.

1. Beginning with the 2009-2010 school year, Amanda shall attend public school in the Meredith school district, where Ms. Voydatch resides.

2. The existing Parenting Plan is modified as follows:

- A. Amanda shall spend the first, third, and fifth (if any) weekend of each month with Mr. Kurowski. When the Monday after such a weekend is a school day, Mr. Kurowski shall return Amanda to Ms.

Voydatch on Sunday evening at 5:00 pm. A weekend shall be deemed to fall in the month in which Saturday of that weekend falls.

B. Each party's request to modify the existing Parenting Plan as to the summer school vacation schedule is denied. The parties are reminded of their authority to reach agreements for modifications.

3. Either party may arrange for Amanda to receive chiropractic care during that party's parenting time, but not, without specific advance consent, during the other party's parenting time. Chiropractic care is not found to be medically necessary, and therefore any uninsured expenses for such care shall be borne by the party arranging for the care. Should either party, after having arranged for Amanda to receive chiropractic treatment, determine that it will be in her best interests to discontinue such treatment, they shall notify the other party before discontinuing the treatment. Should either party contemplate an increase in the nature or frequency of the chiropractic treatments for Amanda, they shall notify the other party in advance and consult with them about the proposed change in treatment. Both parties shall be given access to the chiropractor as they may wish.

4. Except as modified by this Decree, the existing Orders shall remain in effect.


5. Each party's proposed Order is granted to the extent consistent with this Order and otherwise denied.

6. Respondent's Requests for Findings and Rulings: Granted: 1 through 6, 8, 9, 11, 14, 17, 20, 25 through 34, 39 through 41, 43, 53, 55, 56, 59 through 61, 63 through 74; Denied: 7 (as drafted), 10, 12, 13, 15, 16, 19, 21 (as drafted), 22 (as drafted), 23 (as drafted), 24, 35 (as drafted), 37, 38 (as drafted), 42 (as drafted), 54; the rest are neither granted nor denied, except that 44 through 52 are reserved pending the parties' settlement of the financial issues. In the event of an apparent

discrepancy between the narrative Decree and the rulings on Requests for Findings, the Court intends that the narrative Decree control.

7. In the event either party appeals this Decree to the New Hampshire Supreme Court, the terms of this Decree shall remain in effect as a further Temporary Order during the appeal.

Date: 7/13/09


Michael Garner, Marital Master

Approved and so Ordered.

Date: 7/14/09


Justice, Family Division

Luinda V. Sadler

STATE OF NEW HAMPSHIRE
Judicial Branch

Belknap, ss

Laconia Family Division

In the Matter of Martin Kurowski and Brenda (Kurowski) Voydatch

No. 2006-M-669

Order on Life Insurance and Associated Issues

Master recommends:

By agreement, counsel conducted a telephonic hearing July 7, 2009 on the remaining financial issue of life insurance. They reported that the other financial issues are resolved and a stipulation is being circulated and will be submitted to the Court. They agreed that their clients could be excused from attending the telephonic hearing.

Non-financial issues were the subject of a full day hearing on June 2, 2009, and those issues were taken under advisement and an Order is pending.

After considering the arguments of counsel and reviewing the file, the Court finds and rules as follows.

The history of the parties' agreements and modifications is related in prior Orders. In brief, the parties originally agreed in 1999 that Mr. Kurowski would fund and maintain life insurance on his own life, naming Ms. Voydatch as beneficiary, with a death benefit of \$400,000, until Amanda became emancipated. In 2003, they agreed to modify that provision by permitting Mr. Kurowski, "in lieu of obtaining an additional life insurance policy," to establish a Roth IRA account in Ms. Voydatch's name for Amanda's benefit, and to fund it with \$3,000 per year.

Mr. Kurowski was later found in contempt for failing to fund the account in the amount required. Mr. Kurowski submitted evidence,

uncontradicted, that IRS regulations prevented him from funding a Roth IRA in Ms. Voydatch's name because of income requirements.

After a hearing, the Court granted reformation of the Roth IRA requirement and ordered Mr. Kurowski to fund a normal savings account in Ms. Voydatch's name with \$3,000 annual contributions beginning in 2003, but he was also given the option to establish and maintain a life insurance policy with a death benefit of \$400,000. See Order of November 21, 2008 (Clerk's date).

Ms. Voydatch sought clarification of the Order, and, upon reconsideration, the Court required the parties to investigate and report on the terms and amounts of the life insurance policies existing in June 2003. The Court confirmed its intent to reform the 2003 agreement, with benefit of the information about the policies. See Order of January 20, 2009 (Clerk's date).

Mr. Kurowski argues that he should be entitled to purchase and maintain a \$400,000 life insurance policy of whatever kind (whole life or term) by exercising his option to do so, consistent with the parties' original agreement and the Court's November 21, 2008 Order.

Ms. Voydatch argues that permitting Mr. Kurowski to revert to the original agreement would be an impermissible modification of their 2003 agreement, when the Court's stated intent was only to reform that agreement to comport with their intention at the time. She argues that their intention included as a premise that the nature of the existing life insurance policies (whole life) be taken into account.

In 1999, Mr. Kurowski had the option to substitute a term life insurance policy for the existing whole life policies, because the Stipulation did not specify whether he was restricted to purchasing a term or whole life policy. The parties were evidently satisfied for four

years that the policies in effect since 1995 and 1999 were appropriate to satisfy Mr. Kurowski's obligation to provide insurance coverage.

When the parties agreed in 2003 that Mr. Kurowski could create the Roth IRA "in lieu of obtaining an additional life insurance policy," they were both aware of the amount and terms of the existing policies, and by the language they chose for their stipulation they were incorporating those amounts and terms as part of the existing landscape upon which they placed their stipulation. They were agreeing that the existing policies would remain in effect.

When the Court reforms the June 2003 agreement, therefore, with an aim to carry out, as near as possible, the parties' intentions, the Court should presume and order the continued existence of the whole life insurance policies in effect in June 2003. To the extent that the 1999 stipulation is inconsistent, the difference must be resolved in favor of the 2003 agreement.

Therefore, the Court reconsiders the existing Orders, renews the requirement that Mr. Kurowski establish a savings account with deposits of \$3,000 per year, and assigns him a credit equal to the cash values in the existing life insurance policies against the obligation to deposit \$3,000 per year into the savings account, and deferring for three years the requirement that the account be brought completely current.

For the foregoing reasons, the Court orders as follows.

1. No finding of contempt is made at this time, subject to reconsideration upon evidence of noncompliance with this Order.
2. If they have not done so already, counsel shall immediately exchange copies of the most recent statements for the two existing life insurance policies, and confirm the cash values in those policies.
3. Within thirty days of the date of the Clerk's Notice of this Order, Mr. Kurowski shall establish a savings account in the name of Ms.

Voydatch as trustee for the benefit of Amanda, funding the account with \$10,000 less the current cash values in the existing life insurance policies, and copying Ms. Voydatch with written proof of the establishment of the account and the initial deposit.

4. Thereafter, Mr. Kurowski shall, by each anniversary of the establishment of the account, deposit additional sums into the savings account, in accordance with the following schedule:

A. By the first anniversary of the establishment of the account: \$6,000.

B. By the second anniversary of the establishment of the account: \$6,000.

C. By the third anniversary of the establishment of the account: \$3,000 plus whatever sum is required to bring the total contribution current (\$27,000 as of nine years after 2003).

D. Thereafter, by the fourth and subsequent anniversaries of the establishment of the account, \$3,000 until Amanda is emancipated or becomes eighteen years of age.

5. Mr. Kurowski shall provide Ms. Voydatch a copy of the bank's statement of the savings account annually. Alternatively, he may provide Ms. Voydatch with a release permitting her to monitor the status of the account directly through the bank. Once the account is established, Mr. Kurowski shall not withdraw funds from the account nor move the account to any other bank without Ms. Voydatch's consent.

6. The Court defers the question whether, if the existing life insurance policies are no longer in effect, Mr. Kurowski should be given the option, after funding the savings account, to purchase term or whole life insurance for the remaining approximately \$200,000 of required coverage. Counsel may frame this issue with stipulated facts for the Court to decide if necessary; the Court does not intend to conduct a

hearing on that issue unless counsel persuade the Court a hearing is necessary.

7. During the year before Amanda becomes eighteen years of age, the parties shall confer about how the funds should be used for her benefit. If they cannot agree, either party may seek further Orders.

8. The parties have reported settlement of the other financial issues, and shall submit a Stipulation within thirty days.

9. Except as modified by this Order, the existing Orders shall remain in effect.

Date: 7/13/09



Michael Garner, Marital Master

Approved and so Ordered.

Date: 7/14/09



Justice, Family Division **Lucinda V. Sadler**