

INCREASED VISITATION; Essay

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Body

Essay

I WAS SURPRISED TO see the Warrens and their lawyers return to my courtroom so soon, especially since they had apparently reached a settlement a little over a month before. As I watched them take seats at the rear of the courtroom, toward the end of my motion calendar, I thought about the rancorous discussions that had taken place between the parties and the highly detailed custody arrangement and visitation schedule that had followed.

The Warrens were a well-to-do couple that enjoyed the benefits of Mr. Warren's partnership as a litigator in one of New York City's more illustrious white-shoe law firms. Mrs. Warren, accomplished in her own right as an illustrator, had gone into semi-retirement from work outside the home upon the birth of her second child. Mr. Warren's ample income from his practice and his investments enabled the couple to live in a luxurious co-op near Gracie Mansion, send the kids (a boy, Jeff, 7, and a girl, Christy, 5) to private schools, to take frequent and luxurious vacations and to enjoy a large weekend home in Westhampton Beach. Nevertheless, despite these emoluments of financial success, their marriage began to deteriorate. The husband's excessive work schedule, a brief but public affair with a young associate, a possible cocaine addiction on his part, and Mrs. Warren's addiction to amphetamines were all factors in the deterioration of their union.

When the action started, there was nothing concerning the kids that the parties or their lawyers could agree about. At first, Mr. Warren had demanded sole custody, and a full-blown trial, sporting the testimony of seven psychiatrists (one each for the kids and parents, one expert on each side, and the court-appointed forensic) had appeared inevitable. The trial was set to begin during the second week of October. On the morning of the first day of trial, I was finally able to hammer out an extremely specific visitation schedule that went into such exquisite detail that it even dealt with possible controversies over minor Jewish holidays that this couple, married and raised in the tradition of Reform Judaism, had never known existed. The wife was to have sole legal custody of the children; the husband was given joint decision-making rights with respect to educational matters, summer camps and elective medical, psychiatric and dental treatments, and he was provided with extensive visitation rights amounting to almost a shared time arrangement.

It was therefore surprising to me when only a month later my clerk handed me a note saying that the lawyers for the Warrens wanted to see me on an emergency basis with some visitation problems that concerned the upcoming Christmas-Hanukkah recess. At 11 o'clock, after my motion calendar was concluded, I ushered the parties into my robing room to see if I could briefly resolve their problem. The holiday was to begin in two days and by now, I was used to the onslaught of visitation issues that emerged like clockwork around significant holiday times during the year - Christmas/Hanukkah, Passover/Easter and summer recess. But this case was different, I thought. The parties had set out a visitation schedule that covered every contingency until the children attained majority.

Charles Buckland

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M R. WARREN WAS missing and with the two lawyers and Mrs. Warren, the conference began. Mr. Warren was represented by one of the more prominent matrimonial lawyers, a tall, elegantly dressed gentleman in his early sixties who never raised his voice. His opponent, during at least the latter part of the case, was a young woman associate from a firm that handled many substantial matrimonial matters.

What's the problem? I said. Any need to put this on the record?

Not at this time, the wife's lawyer said.

Good, so who wants to start?

Well, it's my application, Your Honor, said the husband's counsel, so let me explain the problem.

Make it brief, I said.

I will, Your Honor. As Your Honor is aware, we executed a very comprehensive agreement less than two months ago, and my client and I are acutely aware of the provisions. The agreement provides that the two-week Christmas/Hanukkah recess should be split each year; this year the husband is to have the first half, Mrs. Warren, the second part. What we are asking Your Honor is for you to modify this year's split schedule, due to an emergency situation, in order to allow Mr. Warren to spend the entire vacation with his children.

I oppose this application strenuously, piped up the counsel for Mrs. Warren.

Why are you bothering me with this? I said, fixing a hard look upon Mr. Warren's counsel. You agreed to the schedule, didn't you? And just two months ago. Isn't there ever any finality with you people?

Well, that sort of is the problem, said Mr. Warren's lawyer. Judge, my client is very ill: about six weeks ago, Mr. Warren found out he was suffering from angiosarcoma of the kidneys, a kind of rare cancerous tumor. He is at Sloan-Kettering today receiving treatment and will be out tomorrow. But, his condition is serious, even grave. Frankly, he has a very limited time to live.

I'm sorry to hear that. What can I do for you?

Judge, here's what I propose. I know the agreement says the Christmas vacation is to be split and the husband is to have the first half and the wife the second half, but in view of the exigent circumstances, I suggest that you amend this year's Christmas visitation to allow the husband to take the kids for the entire two-week period and visit his mother's place in Florida. It may very well be the last time that he and his mother and the kids can all be together.

Well, I said, pondering this state of events, under the circumstances, it seems fair to me. What do you say about this Mrs. Warren?

Mrs. Warren turned to her lawyer, who nodded her approval of the client's answering my question.

Judge, we signed an agreement. We spent weeks, even months on it. I want what's mine under the agreement; he can have what he's entitled to.

But, Mrs. Warren, I replied. Do you dispute this medical condition his lawyer is talking about?

And, Your Honor, interrupted Mr. Warren's lawyer. We have regularly kept Mrs. Warren apprised of Mr. Warren's deteriorating medical condition.

Judge, I'm not interested in negotiating or compromising any more. I signed an agreement with this man. He's always been full of excuses. I wouldn't put anything past him. I only want what I'm entitled to.

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Look, I said to the assemblage. I just don't believe this. No one disputes the fact that this man is extremely sick - perhaps he's even near death. I'm going to issue an order revising the schedule for Christmas.

Judge, hold on please, said Mrs. Warren's lawyer, jumping back into the discussion. If Your Honor is contemplating any unilateral change of visitation, I want the chance to make a record and to preserve my right to appellate review. On behalf of my client, I will not consent to any unilateral alteration of the visitation set out in the agreement. As Your Honor remembers, this agreement was a final, complete document, well negotiated.

I still don't get it, I said. Do you think Mr. Warren would make up such a story just to get the advantage of an extra week at Christmas.

I can't say, Your Honor, and that's not really the issue. All I can say is that my client is entitled to the benefit of the agreement that was freely negotiated.

O.K., O.K., I said. I want you and Mrs. Warren in here tomorrow morning at 10 a.m. sharp. I'll give you a hearing on this. Can Mr. Warren be here? I asked his lawyer.

We'll make every effort, Judge, to have him here.

Judge, one thing,' said Mrs. Warren's lawyer. If there's going to be a hearing, I want the right to cross-examine Mr. Warren's doctor. Will you sign a subpoena?

I'll sign anything you want.

NEXT MORNING, my clerk advised me that the attorneys and Mrs. Warren were present and brought them into the robing room where my reporter and I were ready to begin.

Your Honor, said Mr. Warren's lawyer. I have an application. My client will be unable to attend this hearing. He has taken a very serious turn for the worse and, in fact, Judge, I spoke to his oncologist at Sloan Kettering this morning and it looks like he may expire any day. Accordingly, Judge, we are obviously withdrawing our request for increased visitation over the Christmas holiday. In fact, Mr. Warren won't be exercising any of his visitation at all.

That's it? I said.

That's it, Your Honor said Mr. Warren's counsel.

I turned slowly to Mrs. Warren and her counsel who were seated at my right. I felt a level of rage envelop me and in a icy, controlled tone, I leveled my gaze at her lawyer and asked,

And you couldn't rise above this madness?

Judge, she said, Most respectfully, I resent the implication of your remark. I was only presenting a client.

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