

by the plaintiff at his property 144-146 South Main Street,  
Chambersburg, Franklin County, Pennsylvania.

SOMERS V. SOMERS, C.P. Franklin County Branch, No. F.R.  
1982 - 39

*Visitation - Limitation on Opposite Sex*

1. A parents visitation rights cannot be limited except in situations where the severe mental or moral deficiencies of the parent constitute a real and grave threat to the welfare of the children.

2. Where a mother has strong religious feelings about the father keeping company with another woman while father is exercising visitation with children and mother and father are still married, an order restricting father's social activity while his children are visiting overnight is not overburdensome in light of mother's religious concerns.

*Niles Benn, Esq.*, Attorney for Petitioner

*Robert C. Schollaert, Esq.*, Attorney for Respondent

OPINION

KELLER, J., November 17, 1982:

This matter was commenced upon the petition and motion of petitioner, Larry D. Somers, for a hearing to determine the partial custody and visitation rights with respect to his three minor children - Todd M. Somers born December 28, 1969, Heather A. Somers born January 14, 1975, and Jamie L. Somers born September 5, 1978. The children presently reside with their mother, Ronda Faye Somers, who is the respondent in this action. A hearing was held on September 9, 1982.

The evidence presented at the hearing revealed that the parties were married in June of 1969, and lived together with their three children until March of 1981 when petitioner moved from the marital residence located at 1522 Linden Road, New Franklin. Mr. Somers then took up residence with his parents in the

---

# FIRST NATIONAL

*bank and trust co.*

13 West Main St.  
WAYNESBORO, PA. 17268  
717-762-3161



**TRUST SERVICES**  
**COMPETENT AND COMPLETE**

---

**CITIZENS** *National Bank*  
OF AND TRUST COMPANY  
WAYNESBORO, PENNSYLVANIA  
17268

Telephone (717) 762-3121

THREE CONVENIENT LOCATIONS  
POTOMAC SHOPPING CENTER — CENTER SQUARE  
WAYNESBORO MALL

---

Chambersburg area until September of 1981 when he moved to Dillsburg. During the months he resides with his parents, Mr. Somers was permitted by his wife to have visitation with the children "pretty much" when he wanted it. After moving to Dillsburg, petitioner was at first allowed to see the children as much as he wanted but only if he didn't take them out of the Chambersburg area. Later, respondent changed the visitation arrangements and permitted Mr. Somers to see his children on just one day of the weekend, either Saturday or Sunday, and again the visitation was conditioned on his not taking the children to his home in Dillsburg. Around the Christmas holidays of 1981, respondent continued to restrict petitioner's visitation privileges to the point where he was permitted to visit with Todd, Heather and Jaime only at the former marital residence. These limitations on petitioner's time with his children, dictated by the respondent, prompted Mr. Somers to file a petition for visitation.

The parties and their children met with Dr. James W. Nutter, the Court's Child Custody Mediation Officer, on May 19, 1982, for a conference to determine whether the visitation issues could be resolved without a hearing. The original court hearing scheduled for June 10, 1982, was cancelled when it appeared that the parties had reached an agreement as to petitioner's visitation privileges with the children. However, a final written agreement was never signed due to unresolved differences which necessitated the court hearing on September 9, 1982. The sole point of contention between the parties relates to the presence of petitioner's girlfriend, Marilyn Bowers, with the parties' children during Mr. Somers' visitation periods. The respondent adamantly opposes the exposure of her children to any girlfriend of their father's for religious and moral reasons. She contends that as long as she and Mr. Somers are legally married, the children should not be confused by another woman's presence since it goes against all of their religious training and upbringing.

After hearing all the evidence, this Court entered an order at the conclusion of the hearing granting specific visitation custody to the petitioner with his children but further providing.

"Larry D. Somers shall not exercise visitation/custody with the children between the hours of 9:30 o'clock p.m., and 9:00 a.m., in the presence of Mrs. Marilyn Bowers or any other member of the opposite sex to whom he is not related by blood or marriage."

This limitation on his visitation custody led petitioner to Appeal to the Superior Court of Pennsylvania on October 1, 1982. Pursuant to Pa.

R.A.P. 1925(b) an order was entered on October 14, 1982, requiring petitioner to file a concise statement of the matters complained of on appeal. The petitioner complied with the order on October 27, 1982, alleging as his basis for appeal that the above-cited restriction on his visitation custody rights is overly broad and contrary to the laws of the Commonwealth.

In the case at bar, the mother is an extremely devout lady. She is a member of the Greenvillage Church of God and attends services each Sunday morning and evening and on Wednesday evenings. When revival services are conducted, she attends each service. Mrs. Somers has on the basis of her religious training, experience and deep-seated convictions concluded that it is morally and spiritually wrong for her children to be with their father and his girlfriend, Mrs. Marilyn Bowers, or any other female unrelated to him so long as they remain married. She has made these feelings known to the children, which no doubt has contributed to their unusual conduct when they return from being with their father and Mrs. Bowers. (N.T. 22,23) The respondent apparently has no objections to petitioner being awarded visitation custody with their children provided he is prohibited from exercising such custodial rights in the presence of an unrelated female, for the respondent describes such association as "adultery."

While we understand Mrs. Somers' concerns and do not feel her religious convictions should be lightly disregarded, we do recognize and believe proper the strong judicial policy in this Commonwealth favoring liberal visitation custody privileges for parents not having primary residential custody unless there is strong and persuasive evidence that such visitation custody would not be in the best interest of the children. Therefore, if the posture of this case, her demand for a total bar to visitation in the presence of any unrelated female cannot be granted.

The petitioner lives in a two-room apartment which he described as having a living room, dining room and kitchen in one room and a bedroom equipped with a queen-size sofa bed and a double bed. The apartment was adequate for petitioner and the three children "for short periods of time." (N.T. 14) Mr. Somers testified that he would be willing to accept a limitation on his visitation privileges between 1:00 a.m. and 9:00 a.m. (N.T. 17) The father testified that he cared very much for his children, wanted the visitation opportunity to be a good father, and needed overnight visitations so he and the children get to know each other and to show the children that he cares. (N.T. 15)

We are constrained to observe that the limitation we imposed on the substantially broadened visitation custody we granted Mr. Somers is effective only between the hours of 9:30 p.m. and 9:00 a.m. Jaime is only four years old, Heather is eight years old, and Todd is thirteen. Certainly the two younger children should be in or on their way to bed by 9:30 p.m. Considering such bedtimes and the size of the living quarters occupied by the petitioner, it is hardly unreasonable to expect a

concerned and caring father to tailor his social life according to the needs of his children. We must question the sincerity of father's request for time to visit and get to know his children when by this appeal he evidences an unwillingness to sacrifice eleven and one-half hours out of twenty-four with his girlfriend or other unrelated females in the time allotted to him with his children, and during time periods normally reserved for sleeping.

The order entered in this case complied with the Opinion of the Superior Court of Pennsylvania in *Dile v. Dile*, 284 Pa. Super. 459, 426 A. 2d 137 (1981). In that case, we had entered an order restricting the mother from exercising her visitation privileges "in the presence of any adult male not related to the mother by blood or marriage." On appeal, the order was modified by the Superior Court to limit mother from exercising her visitation privileges specifically in the presence of Herbert Kriner, her paramour. The higher court reasoned that the purpose behind the original provision was to exclude the boyfriend and rather than make the order over-inclusive, the boyfriend's name should be specifically set forth.

In the instant case, petitioner's present girlfriend is included by name in the restrictive paragraph. However, since respondent's objection is raised against all female companions of Mr. Somers due to his marital status, the additional language relating to any member of the opposite sex not related by blood or marriage was added due to the other unique circumstances. Respondent repeatedly referred in her testimony to the religious training provided for the children which condemns the actions of Mr. Somers in keeping the company of another woman while still legally married. An order restricting petitioner's social activities every other weekend while his children are visiting with him overnight cannot be viewed as overburdensome in light of Mrs. Somers reasonable and legitimate religious concerns.

The case presently before this Court is strikingly similar to that of *Commonwealth ex rel. Drum v. Drum*, 263 Pa. Super. 248, 397 A. 2d 1192 (1979) wherein the father sought visitation rights with his three daughters, ages 13, 11 and 8. There the father was also still legally married to the mother although his divorce action was pending. The lower court provided in its order that when father had temporary custody of his children, such visitation should be without the presence of his female companion. This order was affirmed by the Superior Court on appeal. The court noted that the record was replete with references to the religious teachings instilled in the children by their parents which would obviously be

---

# FIRST NATIONAL

*bank and trust co.*

13 West Main St.  
WAYNESBORO, PA. 17268  
717-762-3161



**TRUST SERVICES**  
**COMPETENT AND COMPLETE**

---

**CITIZENS** *National Bank*  
OF AND TRUST COMPANY

WAYNESBORO, PENNSYLVANIA  
17268

Telephone (717) 762-3121

THREE CONVENIENT LOCATIONS  
POTOMAC SHOPPING CENTER — CENTER SQUARE  
WAYNESBORO MALL

---

contrary to the situation where their father, still legally married to their mother, openly kept the company of another woman. Visitation under such conditions would not be in the best interest of the children and such a situation was reasonably avoided by the limitation placed in the court's order.

The order entered providing for visitation by Mr. Somers with his children is not as restrictive as the one entered in *Drum*, supra, and therefore we do not view it as overly broad and/or contrary to the laws of the Commonwealth. Keeping in mind that a parent's visitation rights cannot be limited except in situations where the *severe* mental or moral deficiencies of the parent constitute a real and grave threat to the welfare of the children, *Commonwealth ex rel. Lotz v. Lotz*, 188 Pa. Super. 241, 146 A. 2d 363 (1958), we have limited the condition imposed upon father's visitation rights to specific hours so as not to unreasonably infringe upon his reasonable rights. Balancing these rights against the sincere religious beliefs of respondent concerning her children being exposed to another woman as their father's companion and the best interests of the children, we believe that the restriction imposed upon Mr. Somers' right to visitation is indeed a proper one, particularly in light of its limited scope.

We remain convinced our order was appropriate under the evidence presented to us.

ROCK ESTATE, C.P. O.D. Franklin County Branch, Case No. 79 of 1981

*Orphans' Court - Separate Counts - Demurrer - Removal of Personal Representative*

1. Pa. R.C.P. 1020 (a) applies to petitions filed in the Orphans' Court Division.
2. Where several causes of action are alleged in a petition, they should be set forth in separate counts.
3. Removal of a personal representative chosen by a testator is a drastic action to be taken only when the estate is endangered.
4. Personal relationship between the executors and a debtor of the estate is not grounds per se for removal of those in whom a testator placed trust.
5. A petitioner can bring before the court the issue of an executor's failure to execute on a debt by requesting a citation to show cause where the executor should not execute on the debt.

*Rudolf M. Wertime, Esq.* Attorney for Executrices

*Patrick J. Redding, Esq.*, Attorney for Widow, Eva M. Rock

*Jay R. Braderman, Esq.*, Attorney for Petitioner

## OPINION AND ORDER

EPPINGER, P.J., November 23, 1982:

Marlin Rock, who is a son of Roy N. Rock, the decedent, and who is also a beneficiary under the latter's will, filed a petition for a citation upon the decedent's personal representatives to show cause why they should not file an account and to show cause why they should not be removed from office.

The executrices, who are the decedent's daughters, filed an answer and preliminary objections. The answer is to the citation to show cause why they should not file an account and the preliminary objections go to the demand that they be removed from office.

The executrices contend that the allegations of the petition are so interwoven as to make it impractical to state a defense to both, that the theories of the two prayers of the petition are entirely different and that therefore separate petitions should have been filed or the causes joined as two separate counts. Pa. R.C.P. 1020(a) which is applicable here requires that in pleading, each cause of action shall be state in separate counts, containing a demand of relief.

We believe that the requests to require the personal representatives to file an account and the request for their removal are separate causes of action. If separate causes of action could be maintained for separate relief, then there is more than one cause of action. 2A Anderson Pa. Civ. Prac. Sec. 1020.1. So we will grant the motion to strike.

In deciding whether to sustain a demurrer, the Court must determine whether the facts which the petitioner avers, assuming they are true, state a claim against the executrices upon which relief could be granted. *Taylor v. Richman*, 395 Pa. 162, 149 A.2d 69 (1959). Before the Court will exercise its power to remove personal representatives, it must appear that the interests of the estate are likely to be jeopardized by the fiduciaries continuing in office. *Breichner Estate*, 432 Pa. 150, 156, 247 A.2d 779 (1968); *Fraiman Estate*, 408 Pa. 442, 449, 184 A.2d 494 (1962). Removal of