

clearly expressed intent of the testator be not completely thwarted and held that the nieces as the personal representative of the widow were required to render an accounting.

The agreement between Ralph and Cora set forth a complete plan for disposing of their joint estates. After Ralph's death Cora is permitted to consume and use the estate for her support and maintenance, including the income *and as much of the principal as may be necessary for this purpose*. (Emphasis added). As in *Gramm*, we find that this phraseology placed a definite restriction on the consumption of the principal and that this was emphasized by the fact that Ralph contemplated some would be left to be divided after Cora's death. There was also a provision in the agreement that after the death of one of them, the survivor had the right to sell real estate for its fair market value but the proceeds were to be reinvested in other real property or securities which are to be held subject to the agreement. From this it can be concluded Cora did not have free reign in the use of the principal.

As in *Gramm*, the actions of the widow may be such as to command judicial interference. The complaint states a cause of action and the demurrer will be overruled.

#### ORDER OF COURT

January 8, 1986, the demurrer is overruled.

ROACH V. FAUST, C.P. Franklin County Branch, No. 263 of 1981

#### *Visitation - Father in Prison - Murder of Mother*

1. A party seeking to deny visitation rights to a natural parent must show clear and convincing evidence that the parent's presence is a grave threat to the child.
2. The court may, in rare instances, suspend visitation without a showing of severe mental or moral deficiencies in the parent so as to constitute a grave threat to the child.

3. Where father is in prison for killing mother, an event which child witnessed, and evidence shows that the visits to father have had adverse psychological effects on 7-year-old child, court will suspend visitation.

*Patrick J. Redding, Esq.*, Counsel for Plaintiffs

*Robert C. Schollaert, Esq.*, Counsel for Defendant

#### OPINION AND ORDER

KELLER, J., October 31, 1985:

On June 3, 1985, the plaintiffs presented their petition for a rule to be issued upon the defendant to show cause why the partial custody/visitation awarded to the defendant should not be suspended pending his release from prison. An order was signed the same date directing the rule to issue; scheduling July 15, 1985 at 2:00 o'clock p.m. as the date and time for hearing on the petition; and pending disposition of the petition suspending the visitation rights of the defendant. On July 11, 1985, the defendant's petition for additional visitation rights with his son was presented and an order entered setting July 15, 1985 at 2:00 o'clock p.m. as the date and time for hearing on the petition, and further ordering the parties and child to meet with the Court's Child Custody Mediation Officer, Della S. Stapleton, on August 14, 1985 at 10:00 o'clock a.m. for a conference to determine whether the issue can be resolved by mediation. Hearings were held on July 15, 1985 and September 30, 1985. An order was entered on September 16, 1985 directing the Warden of the State Correctional Institution in Dallas, Pa. to deliver the defendant into the custody of the Sheriff for Franklin County for transportation to the Franklin County Prison so he could attend the hearings scheduled for September 30, 1985. Mr. Faust did attend the second hearing and did testify. Pursuant to the request of the Court counsel for the parties filed proposed Findings of Fact, Discussion of Law and Conclusions of Law on October 14, 1985. The matter is now ripe for disposition.

#### FINDINGS OF FACT

1. The plaintiffs are Benjamin H. Roach and Anna L. Roach, hereafter grandparents. They reside at 675 Shadyside Drive, Chambersburg, Pa.

2. The defendant, Joseph O. Faust, hereafter father, and Sharon Elaine Faust, hereafter mother, were married and living together prior to April 3, 1981.

3. Nathan J. Faust, hereafter child, was born of the marriage of Joseph O. Faust to Sharon Elaine Faust on December 15, 1977.

4. On April 3, 1981 Sharon Elaine Faust was shot to death in the family home in the presence of child.

5. Father was charged with the murder of his wife and entered a plea of guilty to murder in the third degree on September 9, 1981. On October 21, 1981 he was sentenced to not less than 5½ years nor more than 15 years in a state correctional institution.

6. Father is incarcerated at the State Correctional Institution at Dallas, Pa. He will be eligible for consideration for parole at the expiration of his minimum sentence on or about April 13, 1987. He may also be considered for pre-release status and home furloughs from the State Correctional Institution in April of 1986.

7. If father is granted pre-release status and home furloughs, he will spend the furloughs at the home of his brother and sister-in-law, Harvey and Faye Faust, 2004 Philadelphia Avenue, Chambersburg, Pa.

8. Father suffers from guillan barre syndrome and has been wheelchair bound since 1970.

9. The father of Joseph Faust (father) is deceased and his mother is a resident of Franklin County Nursing Home.

10. Since the death of mother and incarceration of father the child has resided with grandparents in their home. Tony (mother's child by a prior marriage who is a high school student) also lives with grandparents in their home.

11. On the stipulation of grandparents and father dated March 26, 1982, the Court entered an order on March 29, 1982 granting father visitation rights with child on one Sunday during each of the months of April, June, August and December of each year commencing April 4, 1982. The order further provided for defendant's brother and sister-in-law, Harvey D. Faust and Faye Faust, hereafter uncle and aunt, to pick up child at 6:00 o'clock a.m. on each Sunday visitation, transport him to the State Correctional Institution at Dallas for visitation with father, and return him to



13 West Main St.  
P.O. Drawer 391  
717-762-8161



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

---



WAYNESBORO, PA 17268  
Telephone (717) 762-3121

THREE CONVENIENT LOCATIONS:  
*Potomac Shopping Center - Center Square - Waynesboro Mall*  
**24 Hour Banking Available at the Waynesboro Mall**

---

**LEGAL NOTICES, cont.**

Ann White and Betty J. Wooden, Executors of the Estate of Flo B. Sheffler, a/k/a Janet Flo Sheffler, late of Waynesboro, Franklin County, Pennsylvania, deceased.

THARP: First and final account, statement of proposed distribution and notice to the creditors of Ivan H. Tharp Jr., Administrator of the Estate of Robert D. Tharp, late of Quincy Township, Franklin County, Pennsylvania, deceased.

Robert J. Woods  
Clerk of Orphans' Court  
10-10, 10-17, 10-24, 10-31

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT  
OF PENNSYLVANIA

UNITED STATES )  
OF AMERICA, )  
Plaintiff, )  
v. )

Civil No. 86-1041

3/1 kg. PLASTIC )  
BOTTLES, MORE )  
OR LESS, OF AN )  
ARTICLE OF )  
DRUG, LABELED )  
IN PART: )

\*\*\*\*CHLORAM- )  
PHENICOL \*\*\* )  
ARGENT CHEMICAL )  
LABORATORIES, )  
INC., \*\*\* )  
REDMOND, WA )  
98052 \*\*\*\* )

and )

UNDETERMINED )  
QUANTITIES OF )  
THE ARTICLE )  
PACKAGED AND )  
LABELED AS )  
DESCRIBED ABOVE, )  
Defendant, )

TO: ALL PERSONS, FIRMS OR CORPORATIONS WHATEVER HAVING OR CLAIMING TO HAVE AN INTEREST IN THE ABOVE-DESCRIBED ARTICLE OF DRUG OR HAVING ANY REASON TO SAY WHY THE SAME SHOULD NOT BE FORFEITED TO THE UNITED STATES

**LEGAL NOTICES, cont.**

You are hereby notified that a Complaint for Forfeiture has heretofore been filed in the Office of the Clerk of the United States District Court for the Middle District of Pennsylvania, in the United States Courthouse, Harrisburg, Pennsylvania, to No. 86-1041, seeking by Decree the forfeiture of the aforesaid articles of drug.

You are requested to file your claim not later than twenty (20) days after completion of the advertisement and serve your Answer to the Claimant for Forfeiture within twenty (20) days after the filing of such claim.

JAMES J. WEST  
United States Attorney

By: SALLY A. LIED  
Assistant U.S. Attorney  
P.O. Box 11754  
Harrisburg, PA 17108

Dated: September 24, 1986

10-10, 10-17, 10-24

1A. TITLE OF PUBLICATION		1B. PUBLICATION NO.				2. DATE OF FILING		
Franklin County Legal Journal		3	7	8	9	5	0	Oct 1, 1986
3. FREQUENCY OF ISSUE		3A. NO. OF ISSUES PUBLISHED ANNUALLY				3B. ANNUAL SUBSCRIPTION PRICE		
Weekly		52				\$25.00 in county*: outside \$20.00		
4. COMPLETE MAILING ADDRESS OF KNOWN OFFICE OF PUBLICATION (Street, City, County, State and Zip+4 Code) (Not printers)* includes bound vol.								
c/o Kenneth E. Hankins, Jr., Managing Editor 210 Chambersburg Trust Co. Bldg., Chambersburg, PA 17201								
5. COMPLETE MAILING ADDRESS OF THE HEADQUARTERS OF GENERAL BUSINESS OFFICES OF THE PUBLISHER (Not printer)								
c/o Kenneth E. Hankins, Jr., Managing Editor 210 Chambersburg Trust Co. Bldg., Chambersburg, PA 17201								
6. FULL NAMES AND COMPLETE MAILING ADDRESS OF PUBLISHER, EDITOR, AND MANAGING EDITOR (This item MUST NOT be blank)								
PUBLISHER (Name and Complete Mailing Address) Franklin County Legal Journal, c/o Kenneth E. Hankins, Jr., Managing Editor, 210 Chambersburg Trust Co. Bldg, Chambersburg, PA 17201								
EDITOR (Name and Complete Mailing Address) Kenneth E. Hankins Jr., 210 Chambersburg Trust Co. Bldg., Chambersburg, PA 17201								
MANAGING EDITOR (Name and Complete Mailing Address) Kenneth E. Hankins, Jr., 210 Chambersburg Trust Co. Bldg., Chambersburg, PA 17201								
7. OWNER (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding 1 percent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a partnership or other unincorporated firm, its name and address, as well as that of each individual must be given. If the publication is published by a nonprofit organization, its name and address must be stated.) (Item must be completed.)								
FULL NAME						COMPLETE MAILING ADDRESS		
Franklin County Legal Journal						c/o Kenneth E. Hankins, Jr., Managing Editor		
(a corporation not for profit, organized on a nonstock basis, comprised of the members of the Franklin County, Pennsylvania, Bar Association)						210 Chambersburg Trust Company Bldg. Chambersburg, PA 17201		
8. KNOWN BONDHOLDERS, MORTGAGEES, AND OTHER SECURITY HOLDERS OWNING OR HOLDING 1 PERCENT OR MORE OF TOTAL AMOUNT OF BONDS, MORTGAGES OR OTHER SECURITIES (If there are none, so state)								

FULL NAME		COMPLETE MAILING ADDRESS	
None		Not applicable	
9. FOR COMPLETION BY NONPROFIT ORGANIZATIONS AUTHORIZED TO MAIL AT SPECIAL RATES (Section 423, 12 DMJM only) The purpose, function, and nonprofit status of this organization and the exempt status for Federal income tax purposes (Check one)			
<input checked="" type="checkbox"/> HAS NOT CHANGED DURING PRECEDING 12 MONTHS		<input type="checkbox"/> HAS CHANGED DURING PRECEDING 12 MONTHS <i>(If changed, publisher must submit explanation of change with this statement.)</i>	
EXTENT AND NATURE OF CIRCULATION <i>(See instructions on reverse side)</i>		AVERAGE NO. COPIES EACH ISSUE DURING PRECEDING 12 MONTHS	ACTUAL NO. COPIES OF SINGLE ISSUE PUBLISHED NEAREST TO FILING DATE
A. TOTAL NO. COPIES (Net Press Run)		139	127
B. PAID AND/OR REQUESTED CIRCULATION		42	41
1. Sales through dealers and carriers, street vendors and counter sales			
2. Mail Subscription <i>(Paid and/or requested)</i>		62	64
C. TOTAL PAID AND/OR REQUESTED CIRCULATION <i>(Sum of 10B1 and 10B2)</i>		104	105
D. FREE DISTRIBUTION BY MAIL, CARRIER OR OTHER MEANS SAMPLES, COMPLIMENTARY, AND OTHER FREE COPIES		0	0
E. TOTAL DISTRIBUTION <i>(Sum of C and D)</i>		104	105
F. COPIES NOT DISTRIBUTED		35	22
1. Office use, left over, unaccounted, spoiled after printing			
2. Return from News Agents		0	0
G. TOTAL <i>(Sum of E, F1 and 2—should equal net press run shown in A)</i>		139	127
11. I certify that the statements made by me above are correct and complete		SIGNATURE AND TITLE OF EDITOR, PUBLISHER, BUSINESS MANAGER, OR OWNER <i>Reynolds E. Stinking Jr.</i> Managing Editor	

PS Form 3526, Dec. 1985

*(See instruction on reverse)*

grandparents' home at 8:00 o'clock p.m. the same day. Uncle and aunt were required to give grandparents at least three weeks notice of the Sunday when they would exercise the visitation rights for defendant. The grandparents were directed to allow child to receive cards and gifts by mail from father and members of his family.

12. It is approximately 162 miles from Chambersburg to Dallas SCI, and it takes between 3 and 3½ hours to make the trip. On the visitation Sunday child leaves grandparents' home at 6:00 a.m. and arrives at the State Correctional Institution between 9:00 and 9:30 a.m. They visit father for 2½ to 3 hours and leave for the return trip between 12:00 Noon and 12:30 p.m.

13. On the visitation Sunday child and aunt and uncle arrive at aunt and uncle's home between 4:00 and 4:30 p.m. where they play with him and he visits with aunt and uncle's daughters, ages 18, 23 and 24, and with his paternal grandmother. He is returned to grandparents' home at 8:00 p.m.

14. Child's only contact with his paternal relatives is on the visitation Sunday after the return from the State Correctional Institution.

15. Child has visited with father on each visitation Sunday authorized by the court order on April 4, 1982 until the visits were suspended by the order of June 3, 1985.

16. Father, aunt and uncle described the visiting area at Dallas SCI as being similar to an airport lounge or big cafeteria with upholstered chairs, a nice table, carpeting and paneling. There is also an outside yard with picnic table and playground equipment. There are many other children present of all ages. There are, however, guard towers, guard stations and a few unobstrusive uniformed guards in the area.

17. Aunt and father testified that when child sees him he runs to him and jumps in his lap and kisses him, and acts happy to see him. They draw, play tic-tac-toe, talk about school and child's plans. Child does not act as if he wishes he weren't there and there are no evident problems.

18. Father makes wooden presents for child, but child does not take them to grandparents' home because he is afraid Tony will break them.

19. Father writes to child twice a month as permitted by the court order, but never receives any communication from child or anyone on his behalf.

20. Father would be permitted to call child on the telephone but the SCI regulations require that he must call collect because he has no money, and he does not believe collect calls would be accepted.

21. In the 1984-85 school year, child was attending the Falling Spring Elementary School Kindergarten.

22. Child's kindergarten teacher, Mrs. Sollenberger, contacted grandparents and reported the visits with father were affecting his learning ability. Grandparents had observed that two days or more before each scheduled visit, child was more "hyper" and did not obey them and he remained that way for several days after his return.

23. After receiving the report from the kindergarten, grandparents made an appointment for an evaluation by Dr. Stephen T. Overcash.

24. Prior to the grandparents contacting Dr. Overcash, Mrs. Janet Springer, child's counselor at the Falling Spring Elementary School, had contacted Dr. Overcash concerning his school work problems.

25. Dr. Overcash is a consulting and clinical psychologist who maintains his psychological services office in the Borough of Chambersburg. He met with and tested child on February 12, 27 and March 6, 1985, and submitted a report to the school and to the grandparents. The report was admitted in evidence. Dr. Overcash also testified at the first hearing:

(a) that child's nightmares indicate an internalized anger arising out of seeing his mother killed.

(b) that child is very bright but not achieving as well as he should be.

(c) that child's teacher observed his misconducts on the days before and for a week after each visit.

(d) that child associates his father with the prison setting and generalizes his father with all types of males which is a dangerous generalization.

(e) that child refers to the visits as boring with nothing to do, but his dreams evidence a fear of going to visit his father.

(f) that child needs to have a good relationship with his father, but at this age and in the light of the incident it can't happen at this time.

(g) that child suffers from an attention deficit which led to his recommendation for a physical examination by Dr. Layman and the administering of tranquilizers to child during the school year which caused noticeable improvement in his condition.

(h) that child needs an emotional distancing between himself and father, and greater maturity before he can possibly have a good relationship with his father.

(i) that he recommends a total cessation of all visits to father at the State Correctional Institution and believes if they are continued the prognosis for child will be pre-delinquent activities or a withdrawal from reality.

(j) that in his opinion the child will improve in the next few years if the prison visits are terminated.

(k) that child and father should remain in contact with each other through regular communications by letter and telephone, and that child be encouraged to tell father how he feels.

(l) that visits by child with father at a Community Treatment Center or while on a home furlough would be far preferable to the prison visits but if such visits occur too soon there would not be the opportunity for the emotional distancing that is needed.

(m) that the optimum age for renewal of the visits would be when child is 9½ to 10 years old.

(n) that maintaining a relationship with father's family might be a good substitute for child's visits with father.

(o) that it is possible grandparents' feelings toward father are detected by child and could influence him and his feelings.

(p) that the prison visits are not useful to child and should be totally eliminated while father is in prison.

26. Mrs. Linda K. Morgan has a Master's Degree in Counseling and is employed as a counselor in the office of Dr. Overcash. She had 10 play sessions with child between March 20, 1985 and May 28, 1985. From her contacts with child, she concluded that the visits with father were "unfulfilling" because there is no opportunity to say what he wants to say so he feels suppressed, and nothing can happen. He also never gets to be with father alone because there are always other people present. She concluded that there was no advantage in the visits for child.

27. Mrs. Morgan testified that she met with grandparents for 15 minutes before each play session so she could get feedback and also effect transference to them. She felt that grandfather had a lot of anger toward father, but he didn't allow it to spill over on child. However, grandmother did not do as well in preventing her feelings against father from spilling over. She did not, however, believe child had been programmed against father.

28. At the request of counsel for father, Dr. James W. Nutter, a Clinical Psychologist, met with child and grandparents on July 25th and with child and aunt and uncle on August 6th for the purpose of evaluating any possible trauma resulting from child's visiting father in prison.

29. Dr. Nutter's report of August 20, 1985 was admitted in evidence and Dr. Nutter testified at the second hearing:

- (a) that in March 1982 he met with child and grandparents as the Court's Custody Mediation Officer and approved the four times per year visits of child with father.
- (b) that he had read the evaluation of Dr. Overcash and the summary of defense counsel of the doctor's testimony at the first hearing.
- (c) that he did not find the child as much harmed or traumatized as Dr. Overcash had found him to be.
- (d) that the child has minimum brain dysfunction but he felt he was anxiety free as to the visits with father and as to school performance.
- (e) that child referred to father as "murderer" and "convict" and said grandmother calls father those names and "he did kill my mother".



13 West Main St.  
P.O. Drawer 391  
717-762-8161



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

---



WAYNESBORO, PA 17268  
Telephone (717) 762-3121

THREE CONVENIENT LOCATIONS:  
*Potomac Shopping Center - Center Square - Waynesboro Mall*  
**24 Hour Banking Available at the Waynesboro Mall**

---

(f) that it is clear grandmother harbors ill will against father and conveys that to child which would create a fair amount of ambivalence in child by placing him in the position of choosing between his surrogate mother and his father.

(g) that the child received ritalin during the school year and it has improved him school performance.

(h) that he didn't find the current visitation plan harmful or detrimental to child and, therefore, concluded the continuation of it would also not be harmful or detrimental.

(i) that he agreed with Dr. Overcash's conclusion that child relates father to the prison setting but he doesn't agree with Dr. Overcash that child relates father to all adult males adversely.

(j) that he does not believe a good relationship between child and father is possible without contact and emotional distancing would accomplish nothing but to help child forget father.

(k) that he saw no evidence justifying the prognosis of Dr. Overcash of pre-delinquent behavior or a withdrawal.

(l) that termination of the visits with father would terminate child's relationship with the entire Faust family.

(m) that child's comments about the visits were mostly negative.

(n) that he did not see any positive benefit to child from the visits with father but was not prepared to recommend the visitations should terminate.

(o) that only grandmother objected to the child having a meeting with him in the presence of the Fausts and he believes grandmother's feelings are aggravating child's lack of positive feeling for father.

(p) that child will continue to have ambivalent feelings about father whether or not the visitations are continued and intermittent counseling of child will be necessary.

(q) that if father is admitted to the pre-release program and granted a home furlough, it would be a good opportunity to expand child's contacts with the Faust family because that might limit child's perception of what a Faust did to his mother.

(r) that he didn't know whether the current visitations were achieving the child's best interests.

30. Stephanie Fay Faust, 24-year-old daughter of aunt and uncle, testified that she had practically lived at father and mother's home for 2 years preceding mother's death, and she had babysat for child regularly. After mother's death she went to grandparents to see child several times, and grandmother accosted her and accused her of seeing child just to report on how he was to father. In 1983 she saw child while Christmas shopping and when she attempted to speak to him grandmother grabbed him and put him in the car. She conceded that there was no court order permitting her to visit child.

31. Child was interviewed in the presence of counsel and on-the-record and we learned:

(a) that he was 7 years old and in first grade at Falling Spring Elementary School on September 30, 1985.

(b) he likes school.

(c) that he doesn't like visiting his father because it is boring to ride that far and there is nothing to do on the visits.

(d) father writes to him but he can't read so father's letters are read to him. He has thought about writing back but can't do it yet.

(e) father makes things for him but he doesn't take them home because Aunt Faye Faust won't allow it and he is afraid Tony will break them.

(f) he would prefer not to visit father and likes going to aunt and uncle's house "a little bit".

(g) he gets worried when he knows he has to go to the prison but he doesn't know why and he won't like visiting father when he gets out of prison even though he is not afraid of him.

(h) he is a little angry with father because he killed mother and that's why he doesn't want to visit.

(i) it helps him to talk to Dr. Overcash and to Dr. Nutter because they make him feel better.

32. In response to a question by the Court, father testified that he would accept more extended visits by child with his family as an alternative to a few more prison visits until he is eligible for home furloughs.

33. Grandmother Roach's hostility toward father is clearly understandable, but her transference of that hostility to child is impermissible.

34. Any efforts by Grandmother Roach to prevent contact by child with father's family are improper.

35. It is essential for the well-being of child that he receive necessary counseling and help so that he will be prepared for more extended visits with his father when he is admitted to pre-release status and granted home furloughs.

36. The home of aunt and uncle is a proper home for child to regularly visit and maintain his contact with the paternal side of his family.

#### DISCUSSION

The strong policy of the Commonwealth of Pennsylvania on the granting of visitation rights to parents is well stated in *Commonwealth ex rel. Peterson v. Hayes*, 252 Pa. Super. 487, 490, 381 A.2d 1311 (1977):

A parent is rarely denied the right to visit a legitimate child. Visitation has been limited or denied only where the parent has been shown to suffer from severe mental or moral deficiencies that constituted a grave threat to the child. *Commonwealth ex rel. Lotz v. Lotz*, 188 Pa. Super. 241, 245, 146 A.2d 362, 364 (1958); see *Commonwealth ex rel. Heston v. Heston*, 173 Pa. Super. 260, 98 A.2d 477 (1953); *Leonard v. Leonard*, 173 Pa. Super. 424, 98 A.2d 638 (1953). Visitation has been granted parents who have ignored their children for a long period of time, *Commonwealth ex rel. Turner v. Strange*, 179 Pa. Super. 83, 115 A.2d 885 (1955); *Commonwealth ex rel. Boschert v. Cook*, 122 Pa. Super. 397, 186 A. 229 (1936), who have failed to support their children, *Scott v. Scott*, 240 Pa. Super. 65, 368 A.2d 288 (1976); *Commonwealth ex rel. Lotz v. Lotz*, supra, who have engaged in marital misconduct or have lived with lovers, *Commonwealth ex rel. Sorace v. Sorace*, 236 Pa. Super. 42, 344 A.2d 553 (1975); *Commonwealth ex rel. McNamee v. Jackson*, 183 Pa. Super. 522, 132 A.2d 396 (1957), and even to parents whose children did not want to see them, *Furnald v. Furnald*, 224 Pa. Super. 93, 302 A.2d 470 (1973); *Commonwealth ex rel. Turner v. Strange*, supra.

This standard has remained constant to date. See *In Re: Damon B.*, 314 Pa. Super. 391, 460 A.2d 1196 (1983), "In dealing with visitation rights, however, the stricter 'grave threat' standard has long prevailed." (At page 394).

The rationale for this standard is well stated in *Commonwealth ex rel. Lotz v. Lotz*, 188 Pa. Super. 241, 146 A.2d 362 (1958), wherein the Superior Court held:

It is against public policy to destroy or limit the relation of a parent or child. (At page 244)

Visitation rights of a parent not in custody have long been a matter of concern in the law of this Commonwealth. They must be carefully guarded for when parents are separated and custody is placed in one of the parents, there exists a danger that the parent having custody of the child may use his or her advantageous position to alienate the other parent from the affections of the child. (At page 246).

A party seeking to deny visitation rights to a natural parent must sustain a heavy burden of proof. "We must be presented with clear and convincing evidence that the parent's presence is a grave threat to his child." *Lewis v. Lewis*, 271 Pa. Super. 519, 525, 414 A.2d 375 (1979).

In the case at bar, we cannot conclude that Joseph O. Faust personally poses a grave threat of any kind to his son, Nathan. While there is some testimony that he fears his father or fears that his father will strike him, there is no evidence that father ever offered or attempted to offer any physical violence to his son. We have no doubt that Mr. Faust loves Nathan, and Nathan represents one of his tangible links to the outside world.

However, we are satisfied that there is clear and convincing evidence that the four trips per year to the Dallas State Correctional Institution have had adverse psychological effects upon the child. The combination of his youth, his recollection of his father killing his mother, the long and presumably boring 6 to 7 hours driving time to and from Dallas, the very length of the day, his lack of regular contact with the aunt and uncle with whom he shares the day, his lack of familiarity with his father, and the open hostility of his Grandmother Roach toward father and his family must



contribute to the creation of unreasonable pressures leading to the school problem observed by his teacher and guidance counselor, and home problems observed by the grandparents. Even the defendant's clinical psychologist had to concede that in three years of visits with father at the prison, he could not say that they were in the child's best interest or that there was any positive benefit to the child. In the case of *In Re: Damon B.*, supra, the Superior Court observed:

In rare instances, we have approved restricting or temporarily suspending visitation even though there has been no showing of such severe mental or moral deficiencies in the parent as would constitute a grave threat to the child's welfare. See *Dile v. Dile*, 284 Pa. Super. 459, 426 A.2d 137 (1981); *Lewis v. Lewis*, 271 Pa. Super. 519, 414 A.2d 375 (1979); *Morris v. Morris*, 271 Pa. Super. 19, 412 A.2d 139 (1979). We believe this is just such a rare case. (At page 395).

We are convinced that the instant case is another one of the rare ones where the evidence compels us to suspend the child's mandated visits with his father at the state correctional institution. Recognizing, however, the importance of the child maintaining a contact with his father and his father's family, pending father's release for home furloughs and ultimate parole, we will order monthly visitation for the child with his uncle and aunt at their home for a reasonable period of time so that he may have telephone contact with his father and be assisted in writing to him. We will also require that grandparents and the child participate in counseling either with Dr. Overcash or another counselor approved by the Court to assist the grandparents and the child in preparing for father's ultimate release from incarceration.

#### ORDER OF COURT

NOW, this 31st day of October, 1985, IT IS ORDERED AND DECREED THAT:

1. This Court's prior order for visitation of Nathan J. Faust with his father, Joseph O. Faust, at the State Correctional Institution at Dallas or any other State Correctional Institution is vacated.



13 West Main St.  
P.O. Drawer 391  
717-762-8161



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

---



WAYNESBORO, PA 17268  
Telephone (717) 762-3121

THREE CONVENIENT LOCATIONS:  
*Potomac Shopping Center - Center Square - Waynesboro Mall*  
**24 Hour Banking Available at the Waynesboro Mall**

---