

the vehicle would be removed before a warrant could be obtained. (At page 88)

In the case at bar, there was no search of the entire vehicle only a cursory flashlight examination of the interior of the cab to which the defendant had opened the door.

With regard to the second search of the vehicle at police headquarters the defendant contends that the first search and seizure of the pipe and marijuana was unlawful and, therefore, the officers had no probable cause for the defendant's arrest or for the request for consent from defendant to search the vehicle. If the defendant is correct in his contention that the initial search and seizure and arrest was unlawful, then he is also correct in his contention that there was no probable cause for arrest or for the request for consent to search the vehicle. We have concluded to the contrary, and we further conclude that the defendant did voluntarily consent, for Chief Benchoff's statement that he would secure a search warrant if such consent was not given was not improper and was clearly justified. Therefore, the second search of the vehicle and the seizure of the contraband and scales was lawful and not in violation of defendant's constitutional right.

ORDER OF COURT

NOW, this 1st day of October, 1981, the defendant's post trial motions for a new trial and in arrest of judgment are dismissed.

The Probation Department of Franklin County shall prepare and file a Pre-Sentence Investigation Report. The defendant shall appear for sentencing upon the call of the District Attorney.

Exceptions are granted the defendant.

SMITH v. SMITH, C.P..Fulton County Branch, C.D., No. 179 of 1981-C

Child Custody - Precedent for Joint Custody - Elements to Consider for Joint Custody

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1. Where the best interests of a child require it, an order for joint custody may be entered.

2. The Court relied on *In Re Custody of Flood*, 9 Adams 56 (1967), affirmed per curiam 211 Pa. Super 772, 237 A.2d 855 (1968) as the precedent for a joint custody order.

Legal Services, Inc., Counsel for Petitioner

Michael B. Finucane, Esq., Counsel for Respondent

OPINION AND ORDER

EPPINGER, P.J., October 23, 1981:

Phylis and Rodney Smith are the parents of Rodney, Jr. born January 19, 1980. When the mother left the father on April 20, 1981 while the parties were living in Fulton County, Pa. she took the child with her. Six days later, her mother, Mitzi Lucas, persuaded her to bring the child to the grandmother's home. The father was there and though the mother wanted to keep him, the father took the child with him and has refused to return the child to her custody. The mother filed this petition for a Writ of Habeas Corpus to gain custody of the child. The mother is 18; the father is 42. Basically he contends that she is immature, cannot care for the child and that arrangements he has made with his mother and his sister for looking after his boy, denying the mother any but supervised visitation, is in the child's best interest and therefore the Court should not interfere. It is his position that until the mother can prove to him that she can take care of the boy, she should not have him.

The father is a rigid person with very definite ideas about right and wrong and insists on dominating and stifling his young wife. At the time they were married she was 15 and he was 39. As she grew older she seemed to resent her husband's role and wanted some freedom; she wanted to make decisions, not stand under his "bad mouthing" or suffer physical abuse or threats at his hands. She is proud that since their separation she has had a part-time job and is seeking full-time employment, that she has a home of her own and has gotten her G.E.D. diploma.

The boy spends most of his time in his paternal grandmother's home but it is a short distance from his father's home. The father works from 4:00 P.M. to 12 midnight and is given to extensive hunting and fishing trips which cut in on his

week-end time with the child. The rearing of the child is largely up to the grandmother and other relative sitters. But it is acknowledged to be good and under good circumstances. Over the years the father has been a good provider, but he has not been really closely involved in the caring for the child, feeding, diapering, that kind of thing. As one witness said, where the child is now he will have something to eat and someone to look after him. There is also a big house, big yard and children to play with.

Before the separation there were differences between the parents. He acted violently toward her, and they argued about the care of the baby. For instance, the mother attempted to train the child by tying him to the pottie when he was eight or nine months old. Both the father and his mother regard this as inappropriate; "Too soon," they say. He also accused her of doing this so she could watch her TV programs. However, he did not spend much time with his wife and son.

In the paternal grandmother's home the child gets up about 7:00 or 8:00 in the morning. The attempt to pottie train the boy had stopped and the grandmother feels he should still drink from a bottle. Her view is that a child doesn't get enough milk from a glass. The boy has a nighttime bottle and sometimes his father gives it to him. She loves the boy very much, has grown attached to him and wants to keep him as her own. The mother can visit the child where he is staying anytime she wants to. The grandmother is 62 years old.

The boy's maternal grandmother, who talked her daughter into the meeting that lost the child's custody to his father, has changed her mind. Months ago she felt it was better for the boy to be with his father. Now she thinks her daughter ought to at least have joint custody of the child and believes the parents could make decisions together. She believes her daughter could prove herself if given a chance and she is available to assist in any way she can. When the boy's mother has had visits, custody is entrusted to this grandmother who sees that the child is returned.

When the parties were living together and when the mother had the child for about a week, she fed and bathed him, gave him the necessities of life and had fun with him - doing most of the parenting. She took the child to a church which the husband attended only occasionally. There were allegations in the father's case that she was not watchful where sharp objects were concerned. We do not find that she was negligent in this respect.

Much was made of an episode last summer which the father contended shows the mother is unstable. He says she tried to kill herself. She says that she only wanted to be alone, walked down under a bridge, was in the water and had to be rescued. If this was not just an accident as she describes it, we do not believe it shows an attempt to take her own life or that it reflects adversely on her ability to care for the child.

Her present residence was questioned as a suitable place for the child. We had the Fulton County Services for Children make an investigation. The director reported that she lives in a one-story frame house located at Kirk's Mobile Home Court in Hancock, Washington County, Maryland. The park is about one-fourth mile from the center of town. She pays \$65.00 a month rent for a one-story room containing a kitchen/dining area, living room, bedroom and bath.

The living room is large and contains a sofa and chair. The house is sparsely furnished as she acquires things only as her budget allows, apparently having taken nothing from their pre-separation home. The kitchen/dining area contains a dining table and chairs, a refrigerator and an electric hot plate, no stove. In the bedroom there is a bed and closet space and a crib is available. The bathroom contains a sink, toilet and shower.

The home is oil heated and has hot and cold running water. There is no yard but there is a park nearby. The entrance drive to the trailer court runs directly in front of the home, is not heavily used but does require driver watchfulness for small children on the road.

The investigator found the home to be quite clean and well-kept, small and suitable for child custody or visits. There was food in the home when it was visited and the investigator concluded that the mother could adequately provide for her son's physical needs in this home. We agree.

The parents appeared with the child before James W. Nutter, Ed.D., Licensed Clinical Psychologist, the Court's Custody Mediation Officer. In their interview, both admitted that there had been much arguing in the home in the several months before separation. She contended that the husband picked on her about everything and had pushed her to the floor on several occasions, but neither parent is concerned about the other mistreating the child.

The report notes that the break-up was precipitated by the

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LEGAL NOTICES, cont.

tion is incorporated.

MAR-ECO, INC.
301 South Antrim Way
Greencastle, Pa. 17225

Maxwell, Maxwell & Dick
Waynesboro, Pa.
Solicitors
12-31-81

Notice is hereby given that on December 16, 1981, articles of incorporation of Meyers-Oberholzer, Inc., a business corporation organized under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, approved the fifth day of May, A.D. 1933, P.L. 364, as amended, with its initial registered office in this Commonwealth at 21 West Seminary Street, P.O. Box 58, Mercersburg, Pennsylvania 17236, were approved and filed in the Corporation Bureau of the Department of State of the Commonwealth of Pennsylvania; the purpose of said corporation is as follows: The corporation shall have unlimited power to engage in and to do any lawful act concerning any or all lawful business for which corporations may be incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania, under the provisions for which the corporation is incorporated.

Dickey and Steckel
Attorneys
11 North Carlisle Street
Greencastle, Pa. 17225

12-31-81

NOTICE is hereby given that Articles of Amendment were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on December 11, 1981, by Quincy United Methodist Home, a corporation incorporated under the Pennsylvania Corporation Act of 1874, approved the 29th day of April, 1874, the amendment to be effective upon filing the Articles of Amendment in the Department of State. The amendment was adopted by the Board of Directors pursuant to 15 Pa. C. S. 7904 (b). The amendments adopted by the corporation, set forth in full, are as follows: A. That Article II of the Charter which reads as follows: "II. The purposes for which the corporation is formed are the establishment and conducting of an institution for the maintenance, and the industrial, intellectual and religious training of orphaned and neglected children and to provide a home for the aged people, in conformity with the discipline and usages of The United Methodist Church" shall be amended to read as follows: "II. The purposes for which the corporation exists are the conducting of an institution for the maintenance of and to provide a home and community for aged people." B. That Article V of the

LEGAL NOTICES, cont.

Charter which reads as follows: "V. The corporation shall be managed by a board of directors who shall be known as trustees, which board shall not be less than seventeen in number." shall be amended to read as follows: "V. The corporation shall be managed by a Board of Directors which Board shall not be less than fifteen in number." C. That Article VI of the Charter which reads as follows: "VI. The members of the Board of Trustees shall be the members of the corporation." shall be amended to read as follows: "VI. The members of the Board of Directors shall be the members of the corporation." D. That Article VII of the Charter which reads as follows: "VII. The Board of Trustees shall have power to adopt by-laws and regulations for the government of the corporation and to amend and repeal same, such by-laws and amendments to be consistent with the constitution and laws of the United States and the Commonwealth of Pennsylvania and with this charter." shall be amended to read as follows: "VII. The Board of Directors shall have power to adopt by-laws and regulations for the government of the corporation and to amend and repeal same, such by-laws and amendments to be consistent with the constitution and laws of the United States and the Commonwealth of Pennsylvania and with this charter."

George S. Glen, Solicitor
306 Chambersburg Trust Bldg.
Chambersburg, Pa. 17201

12-31-81

difficulties and because the mother felt she just had to get out of the home. The father felt that the mother had abandoned the baby, though this is not borne out by the testimony, and that she had problems. She wanted to see a psychiatrist, but he felt it was too expensive.

The report concluded that immaturity is a limiting factor in the mother caring for the child. She may be the least suitable parent at the present time, it says. It was the Officer's recommendation that primary custody should be exercised by the father and the mother should be given regular visitation periods on weekends and longer periods during the summer.

We do not know whether the Officer considered the possibility of joint custody. That is apparently what the mother wants at this time.

Based on the evidence we find credible, we conclude that the best interest of the boy requires an order of joint custody. See *In re Custody of Flood*, 9 Adams 56 (1967), affirmed per curiam 211 Pa. Super. 772, 237 A.2d 855 (1968).

This conclusion is based on the following considerations, not necessarily in order of importance nor on these alone:

- (1) Each parent is fit to have the child.
- (2) Each parent has adequate and proper plans for and ability to take care of the child while in that parent's custody, though the mother's home is more modest.
- (3) Each parent has made satisfactory arrangements to care for the child in that parent's absence.
- (4) The presence of an extended family when the child is with his father.
- (5) The willingness of the maternal grandmother to help her daughter take care of the child.
- (6) The father has a strong interest in the child, but has not demonstrated love and affection or personal involvement with his training and upbringing as much as has the mother.
- (7) The attitude of the parties toward the care of the child. The mother would like to advance his training as much as possible, while the father and his family seem to regard slower growth as better.

(8) The actions of the parties during the period of their declining relationship and at the time of the separation.

(9) The desire to give the child a suitable period of time with each parent and to maintain the ties between each parent and the child and the members of both families.

(10) The recognition that the basic family unit is a mother and a father and the children born to them and that where the parents are separated and neither is disqualified to exercise custody, then it is in the best interest of the child not to see them in competition for his affection but for the children to have set times with each parent.

(11) Acceptance of the proposition that joint custody, at least so far as the child's presence within each home is concerned, is not much different than placing the child in one home with extended visitation rights in the other home.

(12) Reliance upon the proposition that the parents ought to be able to make joint decisions about the welfare of the child. In this case the father said he would welcome her participation in the decision process and she stated he had been a good provider.

(13) The child is not in school and being for a time with one parent and then with the other will not be complicated by school placements.

(14) On the whole, while the mother seems less mature because of her age and the trauma of separation from her husband and the child, she has demonstrated her love and concern for the child and was progressing nicely in the child's training when her custody was interrupted.

ORDER OF COURT

October 23, 1981, it is ordered that the custody of Rodney Smith, Jr. shall be exercised jointly by his parents, Phylis A. Smith and Rodney Smith and that each parent shall have the child in his or her custody for two consecutive weeks, the mother to have the child beginning Friday, October 23, 1981 at 6:00 P.M. through Friday, November 13, 1981 at 6:00 P.M. The father shall have custody during the next two week period and the parties shall alternate thereafter. The parent about to exercise custody shall provide transportation to effect it.

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LEGAL NOTICES, cont.

Harper Weber Kling, late of Guilford Township, Franklin County, Pennsylvania, deceased.

MULL First and final account, statement of proposed distribution and notice to the creditors of Grace M. Rotz, executrix of the estate of Iva B. Mull, late of Greene Township, Franklin County, Pennsylvania, deceased.

SIERER First and final account, statement of proposed distribution and notice to the creditors of Wilbur N. Kauffman, executor of the estate of Beulah M. Sierer, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

STATLER First and final account, statement of proposed distribution and notice to the creditors of Anna R. Statler, administratrix of the estate of Warren W. Statler, late of Guilford Township, Franklin County, Pennsylvania, deceased.

WOOD, JR. First and final account, statement of proposed distribution and notice to the creditors of Carolyn M. Wood and Charles O. Wood, III, executors of the estate of Charles O. Wood, Jr., late of Guilford Township, Franklin County, Pennsylvania, deceased.

Glenn E. Shadle
Clerk of Orphans' Court of
Franklin County, Pennsylvania

(1-8-82, 1-15-82, 1-22-82, 1-29-82)

The father is directed to make as equal a division of the child's clothing with the mother and thereafter each parent shall provide clothing for the child while in his or her custody.

Costs of this proceeding shall be paid by the father.

COMMONWEALTH v. BURKE, C.P. Fulton County Branch,
Non-support Action, No. 105 of 1981-O

Non-support - Illegitimate Child - Support of Stepchild

1. Generally, a stepparent is under no obligation to support and educate the children of his or her spouse by a former marriage, especially if the children have some income.
2. Where a stepparent assumes a parental relation to the children and holds them out to the world as family members, the relationship of loco parentis arises, and the stepparent incurs the same liability with respect to their support and education as if they were his or her own children.
3. The single fact of marriage to a man or woman who has children at the time of the marriage, whether or not being supported by one or both natural parents, does not establish the in loco parentis relationship entitling said children to support or to inherit from a stepparent.
4. A stepparent who provides shelter and necessities to his stepchildren, without more, is not liable for their support.

Merrill W. Kerlin, District Attorney, Counsel for Commonwealth

Robert D. Kodak, Esq., Counsel for Defendant

OPINION AND ORDER

KELLER, J., October 20, 1981:

This action for support was commenced by the filing of a complaint under Chapter 67, Subchapter A of the Judicial Code, 42 Pa. C.S.A. 6701, et seq. in the Court of Common Pleas of Dauphin County, Pennsylvania and by order of that Court three copies of the Complaint in support were transmitted to this Court. The plaintiff alleged in said complaint inter alia that she and the defendant were the natural parents of Aaron