

"Mr. Baughman, the Court will in due course receive a request for comments and recommendations from the State Board of Probation and Parole, and the Court will include a statement, so there is no misunderstanding, in its comment to the effect that it is the Court's intention to give to the State Board full discretion as to the time and date when they feel you have indicated full rehabilitation and are ready to be released. So when you will be released is entirely up to you and your conduct..." (N.T. 4)

#### ORDER OF COURT

NOW, this 14th day of July, 1983, the Petition of Dennis Lee Baughman for relief under the Post Conviction Hearing Act is dismissed.

Exceptions are granted the petitioner.

GREEN V. INSURANCE COMPANY OF NORTH AMERICA,  
C.P. Franklin County Branch, No. A.D. 1982 - 321

*Assumpsit - No-Fault Benefits - Psychiatric Examination - Tape Record Examination*

1. An insurance carrier may require an injured party to submit to a psychiatric examination under Pa. R.C.P. 4010 and Section 401 of the No-Fault Motor Vehicle Act.
2. Where the psychiatrist selected by the insurance carrier is both a physician and attorney, the attorney for the injured party may tape record the examination to ensure the examination is limited to a medical inquiry and does not involve legal advocacy.

*Robert L. McQuaide, Esquire, Attorney for Plaintiff*

*Robert A. Lerman, Esquire, Attorney for Defendant*

#### MEMORANDUM AND ORDER

Eppinger, P.J., September 15, 1983:

Plaintiff was injured in an automobile accident early in 1979.

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Defendant was plaintiff's no-fault carrier and paid medical expenses and lost wages. Defendant determined the plaintiff has recovered from the injuries sustained in the accident and would pay nothing more. Then, plaintiff started this suit. Medical reports in the hands of the defendant show that the plaintiff has indeed recovered from the injuries sustained in the accident and commenting physicians say that plaintiff should be examined by a psychiatrist.

Defendant has filed a motion for psychiatric examination. We agree that under Pa. R.C.P. 4010 and Section 401 of the Pennsylvania No-Fault Motor Vehicle Act the defendant is entitled to require plaintiff to appear for such examination. Before this matter came to court for argument, plaintiff agreed to see a psychiatrist selected by the defendant but the defendant has changed its mind and now wants the plaintiff to see Dr. John Hume.

If plaintiff is to see Dr. Hume, then her attorney wants to be present and to make a tape recording of the examination.

Defendant reports that the doctor does not want this because it would interfere with the examination. Defendant points out that Dr. Hume, in addition to having a medical degree, also has a legal degree. In this situation it may be difficult to determine where medical inquiry ends and legal advocacy begins. The only protection for plaintiff that the examination will not go beyond a psychiatric evaluation and not turn to legal questions is for her attorney to be present and have the opportunity to record the proceedings.

It might be suggested that the plaintiff's attorney's presence alone would suffice. The only problem that we see is that if the attorney and the psychiatrist were at odds with regard to certain responses the attorney would have to take the witness stand to rebut the psychiatrist and then withdraw from the case. With a tape, that might not be necessary.

#### ORDER OF COURT

September 15, 1983, the defendant's motion for a psychiatric examination of the plaintiff by a psychiatrist of defendant's choice is granted. The defendant having chosen Dr. John Hume, the plaintiff is directed to submit to such examination at Dr. Hume's office, 2446 Logan Street, Harrisburg, Pennsylvania 17110 on Monday, September 26, 1983 commencing at 1:00 P.M. The examination shall consist of basic psychiatric evaluation,

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conducted by verbal interview and testing. The plaintiff's attorney is authorized to be present at the examination and to record the proceedings.

KIRK v. KIRK, C.P. Franklin County Branch, F.R. 1979 - 275-C

*Custody - Shared Custody - Two School Districts - Educational Responsibility - Children's preference*

1. A child's preference for one parent over another is a factor to be carefully considered when based on good reasons, but it is not controlling.
2. Where a mother is the primary caretaker of a child of tender years throughout most of the child's life, the Court considers this a substantial factor in a custody matter.
3. Where parents reside in different school districts and they share custody of a child, there will be no tuition charge for the time the child resides outside the district providing the child's schooling, if the court charges one parent with the educational responsibility of the child and the child enrolls in that parent's district.

*David C. Cleaver, Esq.*, Counsel for Defendant

#### OPINION AND ORDER

KELLER, J., August 11, 1983:

This action was commenced with the filing of a complaint for custody by the plaintiff on July 16, 1982, and an order was entered on the same date scheduling a meeting of the parties and children with the Court's Child Custody Mediation Officer, Dr. James W. Nutter, on August 11, 1982 at 1:00 o'clock p.m., and scheduling a hearing on the matter for September 2, 1982 at 1:30 o'clock p.m. The parties met with Dr. Nutter pursuant to the court order and the Child Custody Mediation Officer's report of July 16, 1982 was forwarded to the Court. On September 2, 1982 the parties stipulated to the entry of an order that the parties should have shared custody of their children, Robert L. Kirk, Jr., born May 8, 1978, and Luene R. Kirk, born September 22, 1979, and providing for physical custody:

(a) With Minta L. Kirk, except as hereinafter provided.

(b) Robert L. Kirk shall pick up the children at the Trinity Lutheran Church Day Care Center, Commerce Street, Chambersburg, Pennsylvania, on Thursday afternoon, September 9, 1982, and shall have custody of them until 7:00 o'clock p.m., on Sunday, September 12, 1982, and alternating weekends thereafter.

(c) The parents shall alternate the following national holidays they being Labor Day, Thanksgiving, New Year's Day, President's Day, Easter Day, Memorial Day, and July 4th from 9:00 o'clock a.m., until 7:00 o'clock p.m. with Robert L. Kirk commencing with Labor Day 1982.

(d) Robert L. Kirk shall have in even numbered years custody of the children from Noon on December 23 until Noon December 25, and in odd numbered years from Noon on December 25 until Noon December 27.

The order also provided that the father should provide transportation for the children; that the order would remain in effect for six months and thereafter either party might move for a hearing on the merits, and neither party should exercise overnight custody of the children in the presence of a member of the opposite sex not related by blood or marriage.

On April 22, 1983, counsel for the defendant presented a motion for hearing, and an order was signed setting June 6, 1983 at 1:30 o'clock p.m. as the date and time set for hearing on the matter. A hearing was held as scheduled on June 6, 1983, and at the conclusion of the hearing an order was entered which provided:

"Minta L. Kirk, mother and Robert L. Kirk, father, shall have shared physical custody of their children, Robert L. Kirk, Jr., born May 8, 1978, and Luene R. Kirk, born September 22, 1979, on the basis of Robert L. Kirk, father, receiving the children at the Trinity Lutheran Church Day Care Center on Friday, June 10, 1983, at 3:00 p.m. or close to that approximate time, and he shall have the children until Friday, June 24, 1983, when Minta L. Kirk, mother, shall pick up the children and have them for the following two weeks and like two-week periods thereafter until further order of court.

"During the summer of 1983 the provisions for holiday visitations and for weekend visitations will be cancelled until further order of court.

"The rule remains in effect that neither party shall exercise