

R Kearns

LOU ANN FREDERICK  
Plaintiff

: COURT OF COMMON PLEAS OF  
: BLAIR COUNTY, PENNSYLVANIA

v.

: NO. 96 GN 2139

ROBERT G. KEARNS, JR.  
Defendant

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HON. HIRAM A. CARPENTER III

PRESIDING JUDGE

LOU ANN FREDERICK

PRO SE

ROBERT G. KEARNS, JR.

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**OPINION and ORDER**

This matter comes before the Court for resolution of the issue of primary custody of the parties' minor child, Stephanie Kearns. The voluminous record in the case actually encompasses several proceedings. First, the transcripts of the proceedings before Hearing Officer Richard Consiglio of June 23, 1997; September 22, 1997; October 10, 1997; and finally the meeting regarding exhibits on October 27, 1997. Second, the transcripts of proceedings before the undersigned on February 1, 1999; February 2, 1999; and February 4, 1999, which proceedings arose out of the appeal of the proceedings before Mr. Consiglio. These proceedings ultimately resulted in the current Agreed Order in February, 1999, by which the parents presently share physical custody of Stephanie equally. The matter is now before the Court based on the father's Petition seeking primary custody. Hearings were held/scheduled on April 5, 2000; April 6, 2000; April 7, 2000; April 20, 2000; and May 16, 2000; at which time the record was closed. The matter was then reopened on June 20, 2000, to consider Stephanie Kearns' participation in the Summer

Partial Hospitalization Program. We deferred that decision to this Opinion since, as we will discuss, the issues related to Stephanie's participation in the Partial Hospitalization Program are at the very heart of the parties' overriding custody dispute. The case is presently properly postured for our disposition.

As the record of the prior hearings suggests, this case has a long history going back to the parties' final separation in December of 1996. Notwithstanding this is the first contested hearing taken to completion over the issue of primary custody, the parties have been at odds over the issue of Stephanie's care since the time of their separation. This is not in any way the fault of Stephanie Kearns. Rather, it is the inability of the parents to agree on the causes of her deteriorating behavior and a proper response to that behavior. It is also the existence of numerous unresolved issues in their own relationship which have scarred them both. These wounds are so deep and festering one of the few issues on which the parties can agree is the absence of any realistic possibility shared custody can succeed in this case. This view is shared by Stephanie's court-appointed legal guardian, Attorney Beverly Mears.

Attorney Mears offered the following in her Memorandum Opinion on June 26, 2000, where shared custody was concerned:

Although my impression is that neither parent would intentionally hurt Stephanie, the ongoing stress of the custody dispute and different attitudes concerning what is in her best interests, is harmful to her. The parents are not able to communicate with each other. To continue with shared legal custody or shared physical custody would only continue the discord. One parent needs to have primary physical custody; the other parent needs to have partial custody on a limited basis; at most, every other weekend. Stephanie does need to have contact with each family, but only if that contact would not be used to convince her that the custodial parent is harming her.

We agree shared custody is inappropriate. We also agree contact with the noncustodial parent must be limited. We believe the likelihood contact would be used to convince Stephanie the custodial parent is harming her is great. To understand why, we discuss the position of each of the parents.

The father's position is that prior to the parties' break-up in late 1996 Stephanie presented as any normal child. After the parties' separation, Stephanie's problems began when the mother withheld contact from the father (and his family) for a period of some several months. Since that time, the father contends the mother has enlisted the medical profession to advance her interests in this custody litigation causing Stephanie's present condition. His contempt for the mother and the medical profession cannot be overstated. In the case of the mother, he accuses her of suffering from Munchausen by proxy and abusing Stephanie to call attention to herself and achieve her goals. In the case of the medical providers, they are conspirators with the mother motivated by profit to ally themselves to Stephanie's detriment. This conspiracy is demonstrated by what the father perceives as the unwillingness of the various providers to meet with him, include him in Stephanie's treatment, or take his views into account where Stephanie is concerned versus their docile acceptance and subsequent reliance on everything told to them by the mother. He is convinced a return of Stephanie to his custody and the protective cocoon which his family represents will either enable Stephanie to "get well" or conclusively demonstrate she was never sick in the first place. Mr. Kearns, as well as several family members who attended these hearings in his support, registered such strong emotions, even in the controlled environment of a courtroom, that it would be impossible for anyone observing them to reasonably believe any possibility of compromise exists in these beliefs. Mr. Kearns has never been supportive of any treatment recommendation with

respect to Stephanie. He is adamant Stephanie's long-expressed wish to return to him should be honored (or at least attempted). He cites to Stephanie's wish to reside with him as the only necessary proof that she perceives this need as well. We view his resolve as such that, if denied custody, he would effectively and intentionally undermine any efforts made on Stephanie's behalf contrary to his wishes. To him, Stephanie should be removed from her abusive mother and the medical "quackery" to which she has been subjected by that mother.

The mother presents a very different history relative to Stephanie. The mother describes herself as the primary care parent since Stephanie's birth. She describes that parenting as difficult. Stephanie was never still, could not sleep, was a nightmare to handle in public, and demanded her own way almost from the time she could express it. She had no strong desire to learn. This situation was made much worse by the father's attitude. She describes the father as distancing himself while she made all the decisions only to later complain or reverse them once they were made. School for Stephanie was a disaster in first and third grades long prior to their separation.

She described herself as "snapping," leading to her separation from Mr. Kearns on November 25, 1996. She saw a situation where Mr. Kearns never worked and left everything up to her then belittled or undermined her effort. His family caused constant problems by raising issues which kept everyone in turmoil. Reasoning with them was out of the question. She believes Stephanie's expressed desire to be with her father is a combination of Stephanie feeling disloyal to that united family front if she expresses otherwise plus the natural alienation a child like Stephanie feels when her selfish demands are not met in the mother's household as they are with her father. She believes Stephanie is manipulating both her parents. She

denies seeking treatment for Stephanie beyond her basic needs. She contends she has a mind of her own where treatment is concerned. She does express the belief, however, that when several doctors agree on a course of action there is a need to go along with that advice at least until proven differently.

Her reaction to Mr. Kearns' attacks that she is inflicting mental illness on Stephanie with the doctors as her conspirators is a combination of sadness and anger. She believes Mr. Kearns is obsessed with delegating fault where Stephanie is concerned because he is actually afraid the fault may be his. At hearing, she even absolved him from blame. This is consistent with her position Stephanie's problems were always there waiting only for events to make them evident to everyone. She is tired of the issues raised by Mr. Kearns and his family. She seems to view the family members as indistinguishable in their attitudes and holds them partly responsible for the break-up of her marriage. She seeks closure with respect to the custody issue and asserts her belief Stephanie would do best in her care. She presents as willing and able to deal with Stephanie's admitted alienation from her, enforce the rules of her household, and follow through with recommended treatment and medication. This directly contrasts Mr. Kearns' expressed desire to withdraw from the same and give Stephanie the opportunity to "be a child".

Confronted with this history, we understand our responsibility to decide the case consistent with the applicable legal standard. That standard has been repeatedly stated as deciding in the best interest and permanent welfare of the child. *Commonwealth ex rel. Pierce v. Pierce*, 493 Pa. 252, 295, 426 A.2d 555, 557 (1981). We acknowledge that parents do not have a property right in their children and that whatever claim they make for either custody or visitation rights must be tested by what is in the best interests of the child. *Commonwealth ex rel. Children's Aid*

*Society v. Garr*, 263 Pa. 85, 97, 66 A.2d 300 (1949). Significantly in this case, we note that a custody decree is not meant to punish a parent or anyone else in pursuit of an Order which will help a child. *In Re: Custody of Temos*, 304 Pa. Super 82, 450 A.2d 111 (1982). It is particularly relevant to our case that our decision be based on the current facts and not the past conduct of the parties in any respect that does not affect the child presently. *In Re: Laskovich*, 253 Pa. Super. 349, 385 A.2d 373 (1978). Moreover, continuity and stability are important elements in a young child's emotional development and are proper considerations for the Court. *Commonwealth ex rel. Jordan v. Jordan*, 302 Pa. Super. 421, 488 A.2d 1113 (1982). Finally, hostilities between the parents are relevant but should only be considered insofar as they constitute a threat to the child or affect the child's welfare. *Dena Lynn F. v. Harvey H. F.*, 270 Pa. Super. 95, 419 A. 2d 1374 (1980); *Commonwealth ex rel. Peterson v. Hayes*, 252 Pa. Super. 47, 381 A.2d 1311 (1977); *Nancy E. M. v. Kenneth D. M.*, 462 A.2d 1386 (1983). Consistent with the standards set forth above, we seek a resolution in the best interests of Stephanie Kearns under her present circumstances.

Based on the record, we are satisfied a change in primary custody in favor of the mother is overwhelmingly indicated. We are also convinced the father's opportunity to interact with Stephanie and inevitably undermine the mother's efforts must be dramatically curtailed unless and until he proves he can effectively interact with Stephanie without disrupting treatment and aggravating her very real illness. For a Court to be required to implement such a decision is dismaying. No Court wishes to curtail the role of a parent to the extent we must in this case. However, if Stephanie is to have any opportunity to grow and develop, our Order is absolutely necessary and mandated by the record. The evidence is overwhelming that Stephanie Kearns presently suffers from numerous issues relating to her mental health and is in need of

immediate treatment. This is a reality which Mr. Kearns has no inclination to admit let alone treat. As the guardian for Stephanie so kindly put it;

The testimony presented by the expert witnesses, (including two psychologists and two psychiatrists) at the custody hearing reflects that Stephanie has a extended mental health history, including self-abusive behavior, in-patient hospitalizations, and a mental health diagnosis for which Stephanie is receiving medication and counseling.

Mr. Kearns and his family do not agree with the mental health professionals. Mr. Kearns does not believe that Stephanie needs the ongoing treatment, including medication and counseling. Accordingly, he is not supportive of treatment recommendations that the professionals have for Stephanie. Mr. Kearns did not present any expert witness testimony that would indicate that, indeed, Stephanie does not have mental health issues. This poses the obvious concern, of whether Stephanie would receive ongoing treatment, if Mr. Kearns were awarded custody. Two psychiatrists testified that Stephanie needs the medications and counseling.

That Stephanie Kearns has mental health issues has been proved beyond any reasonable doubt whether we take the testimony of Dr. Hanlon (psychiatrist), Dr. Polmueller (psychiatrist), Scott Lambert (school psychologist), Dr. Rudy Medina (board-certified psychiatrist), or Dennis Kashurba (psychologist); all of them testified Stephanie Kearns is a very disturbed child. Indeed, Dennis Kashurba and Dr. Medina who saw her most recently opined that Stephanie is so disturbed they believe neither parent can effectively maintain her in their homes and that a secure and structured residential treatment facility is presently indicated. These two professionals have no ax to grind with either the father or the mother. They do not even know them. They evaluated Stephanie at Conemaugh Hospital during her recent crisis intervention.

As such, their opinion is entitled to considerable weight since it is the most recent medical information this Court has. We ask ourselves – if Stephanie is in crisis in which home would her needs be met. The only answer to that question is the mother's home. No other finding is possible.

This Court listened intently to the evidence in this case. That evidence presented an unusual opportunity for the fact finder to understand the position of these parties. Since the parties were pro se, even their questions demonstrated their beliefs, motives, and biases. Especially in the case of Mr. Kearns his questioning of the various experts speaks volumes as to his uncompromising attitude. The expert witnesses were subjected to a uniform lack of respect and incessant questioning of their professional judgment. To Mr. Kearns, they are worse than wrong. Their actions are deliberately against Stephanie's best interest. In support of his position, however, beyond the accusations in his cross examination Mr. Kearns offers only himself as a witness. A host of experts have been involved in this case. None of them testified that Stephanie does not have real issues needing both treatment and medication.

In the face of this evidence Mr. Kearns simply dismisses them as uniformly biased and partial to the mother's view. We have no hesitancy in observing that Mr. Kearns, at best, would have been difficult to involve in treatment since he is not receptive to it as demonstrated ad nauseam in this record. We foresaw this difficulty with respect to Mr. Kearns' attitude even at the time of our February, 1999, Agreed Order and encouraged Mr. Kearns to get his own medical opinion. We knew difficulties were likely if he was with Stephanie half the time and was not satisfied as to her need for treatment. He failed to get this opinion.

Mr. Kearns has indicated he did make efforts but that new experts were reluctant to get involved in what they viewed as a custody litigation. To this we can



only say – Amen! The problem with this position, however, is in February, 1999, he was no longer in a custody litigation. We know of no reason why at the time of the Agreed February Order he could not have taken this matter to another doctor simply for an opinion which he could “trust” without even mentioning litigation. In fact, in February, 1999, we were not interested in Mr. Kearns litigating the matter further and neither (he claimed) was he. We were interested in Mr. Kearns being assured Stephanie’s issues did exist based upon the analysis of a doctor of Mr. Kearns’ own choosing. Then Mr. Kearns would have been willing to assist in (we hoped) supporting Stephanie’s treatment. Of course, he failed to do this. We concede we are not surprised. Mr. Kearns’ view of his own correctness – whether he is diagnosing Stephanie (ill or not ill) or his wife (Munchausen by proxy) does not seem to require an actual opinion from the medical profession. While that may satisfy him, however, it is not remotely compelling before a Court which requires evidence. Rather, we view it as dangerous and uninformed as to Stephanie and potentially slanderous as to the mother.

We ask ourselves what evidence the father has produced that the mother suffers from Munchausen by proxy. The answer is none. Mr. Kearns’ presentation in this regard consists of his own “medical opinion” as to her diagnosis and then a series of questions directed to each expert who testified paraphrasing a medical definition of Munchausen by proxy and then demanding of each expert if those symptoms did not fit the mother. No expert conceded even remotely that they did. Indeed, the expert testimony gave no hint the mother was other than both fit to parent Stephanie and interested in Stephanie’s treatment.

In the end, the father offered nothing but his own views as to the mother which are hopelessly lost in the long distant past. As we listened to his cross

examination of the mother this became more and more apparent. This was a case where the parties had reached an agreement in February of 1999, to share the parenting. The issue before the Court now was how Stephanie had done under that agreement so we could make a determination as to primary custody. Incredibly, Mr. Kearns asked virtually no questions as to any event occurring after 1997. He asked no questions as to the mother's care of Stephanie. He presented no evidence of his own "good times" with Stephanie. What he questioned most was the nature of their separation and other related issues. Stephanie drew almost no mention, nor did anything suggesting Munchausen by proxy.

We make no claim to be an expert on Munchausen by proxy. However, if the mother is obsessed with inflicting pain on Stephanie why did she voluntarily agree in February, 1999, to an equal time shared co-parenting with the father giving in to Stephanie's wishes? Further, why is this proceeding brought by the father to take primary custody if it is the mother who is driven to call attention to herself? This makes less than no sense.

On the other hand, all of the experts diagnose Stephanie as ill (some acutely) and in need of both medication and treatment. This is consistent with all of the fact witnesses who testified with the notable exceptions of Mr. Kearns' family members. Whether we were listening to the testimony of Mrs. Bonita Reimer (Stephanie's treatment team), Shannon Kelly (Children And Youth Services), or Kathleen Waligore (social worker Aloysius Hall), they describe in a school, home, and hospital setting, respectively, a deeply troubled child in need of a parent who is supportive of treatment. The testimony of Mrs. Reimer within the school setting was particularly revealing. To show the depths to which Stephanie has sunk, Mrs. Reimer describes her as unwilling to even go to the physical effort of turning a page. Example

after example of this type of withdrawal and passive behavior combined with other incidents of angry outbursts demonstrate just how troubled Stephanie is since February, 1999.

We should add what is true of the record in our hearings in April, May and June, 2000, was just as true in the proceedings before Hearing Officer Consiglio in 1997 and this Court in February, 1999. From these hearings, we have the benefit of numerous additional experts including but not limited to Lynn Kagarise (licensed clinical psychologist), Dr. Hill (staff psychiatrist at the Meadows), and Dr. Nancy Baker (licensed clinical psychologist), to name only several. We do not dwell on their findings since they are more distant in time except to note their opinions are consistent with Stephanie's present difficulties (which we view as most important to this proceeding) In fact, these opinions anticipate these very difficulties as likely if the conflict between the parents continued (as we know it has). Faced with this veritable mountain of evidence, Mr. Kearns presents his own opinions as to his child and "diagnosis" of the mother as conclusive.

This leads to the most troubling aspect of this case. That is, deciding a case in favor of the mother where the child has expressed a long-held preference to reside with her father. To say this issue is extremely difficult is an understatement. Stephanie has been described to this Court by her most recent medical examiners as in need of a residential treatment facility now. We question Stephanie's stability based on the factual and medical evidence and our recent interview with her. We do not know what her reaction to our Order will be, but we are definitely concerned. We have considered Stephanie's expressed desire and even given it heightened sensitivity in light of what we view as her fragile condition and possible explosive eruption at her wish being denied.

Within (and notwithstanding) our legitimate concerns, however, we are again guided by the applicable legal standard. That standard is long-established that the particular weight to be given a child's preference as to custody is to be determined by the trial judge who sees and hears the child and depends to a great extent upon the maturity, and intelligence of the child. *Jones v. Jones*, 495 A.2d 205 (1985). The preference of a child in a custody case although not controlling, is a factor to be carefully considered as long as it is based on good reasons. *E.A.L.*, 662 A.2d, 1117. We have already established in this case that the ability of the father is not even remotely equal to the ability of the mother to meet Stephanie's present needs. In that context, we examine her preference.

Two truths are self evident as to Stephanie. First, there is no question her preference is the father. Second, there is also no question we have been involved in no case where a child was less able to articulate mature and intelligent reasons for that selection. A review of the record of this Court's conversation with Stephanie will disclose that upon asking her the reasons for her preference Stephanie immediately launched into an explanation to this Court that her preference is based on the fact she was abused in her mother's household. This included her reporting her mother had placed her in scalding water on the very day we conducted our interview (we saw no injury even though Stephanie "showed" it to us) and an accusation it was her mother who pulled out her hair as opposed to Stephanie herself doing it as reported by all the witnesses (even the father). Deliberate misrepresentations such as these are totally consistent with the evidence in this case that Stephanie is prone to exaggeration and manipulation to obtain her ends. They are not, however, reassuring to this Court that her choice of the father's home is for reasons other than her having adopted the father's agenda towards the mother and her own doctors through repeated exposure

from her father. Indeed, as early as 1997, when being interviewed by Richard Consiglio, Stephanie described her doctors as “crazy”. This is not what we would expect to hear from a child (particularly one who is ill) and not yet ten years of age. It is an adult talking and there is no question who that adult is.

This is all consistent with the evidence. One of the most serious problems with this case is Mr. Kearns’ steadfast refusal to acknowledge the ongoing litigation and conflict damages Stephanie. Numerous witnesses testified to this in 1997. Still more witnesses testified to it in the proceedings before this Court in 1999. In our hearing this year, all of the witnesses involved with Stephanie whether from the agencies, the school, or experts from the medical profession testified to it. Yet, the father cannot accept it and will not accept this or abide it.

We cite to a letter which we received from Mr. Kearns on May 17, 2000, as the most recent example of this. This letter arrived after all parties had been cautioned by the Court not to discuss the matters with Stephanie or her testimony as upsetting to her. As the letter indicates Mr. Kearns refers to several statements “made to him” by Stephanie the very next day following my interview with her on May 16<sup>th</sup>. However, it is clear they were not statements. They were obvious responses to questions by Mr. Kearns. There is no nuclear rocket science involved in that determination. Instead, it is painfully simple. Stephanie had no knowledge of any letter of hers being offered for the record. She had attended none of the proceedings. As such, only a direct question from Mr. Kearns regarding the letter could have caused her to recall my failure to discuss it with her. The letter at issue is of no significance in this record. However, that Mr. Kearns would question Stephanie over such a trivial matter is very significant both in itself and in causing us to ask how much more they “discussed” her testimony. Regardless, it is clear he was more interested in

maintaining the legality of his position than Stephanie's best interest which was either overshadowed, ignored, or not understood compared to his need to further the litigation. This is exactly the kind of parent Stephanie does not need at this juncture. Stephanie has become a poster child for Mr. Kearns' agenda against his wife, the medical professionals, and anyone else in disagreement with him. Stephanie needs distanced from this litigation. Mr. Kearns paid lip service that he knew that. Yet, first he could not resist involving her and then he had the nerve to throw it right in the face of the Court deciding the case that he did not follow our directive.

Sadly, this conduct is not new. The record of earlier proceedings will reflect that Stephanie was a "poster child" for Mr. Kearns and his family. They previously publicly picketed the courthouse protesting in the "nature" of custody proceedings conducted in this county including attacking the qualifications of experts used by this Court seeking media attention (they got it) and ignoring Stephanie's privacy/treatment. Frankly, we were prepared to overlook this as ancient history even though it was clearly not in Stephanie's best interest. In light of the May 17, 2000, letter, however, we would be intellectually dishonest not to note this earlier behavior. The continuation of it is only one more reason why Mr. Kearns not only cannot be selected as the primary care parent but why his role with Stephanie must be restricted, monitored, and possibly even terminated if he isn't able to abide our parameters for whatever period of time is necessary to attempt to stabilize Stephanie.

We view all of this in the context of Stephanie's expressed preference for her father. Despite their denials, we have a strong conviction the agenda of Mr. Kearns has been communicated to Stephanie by both himself and probably by other family members. Given their public posturing, this could hardly be otherwise. This has undoubtedly influenced Stephanie's preference and contributed to her alienation

from Mrs. Frederick. While there is no way we can quantify this, we are satisfied it is both considerable and probably willful.

Stephanie has not been truthful with this Court. She has not expressed any mature intelligible reason why she should be with her father as opposed to her mother. She has expressed a preference for the father. She has expressed an alienation with the mother. Beyond those simple sentences, however, she has expressed nothing to add weight to her preference. In fact, one of the numerous ironies in this case is that Stephanie, in expressing her preference, gave no examples of any "good times" in her father's home which contribute to her decision. Her presentation was one of alienation from the mother and preferring the freedom in the father's household. Tellingly, this is exactly the mother's argument as to why Stephanie prefers the father. Equally tellingly, it is consistent with the interview which Hearing Officer Consiglio had with Stephanie in 1997 where she expressed the desire to simply "play" all of the time with her cousins as a primary reason for increased contact with the father's household as opposed to the importance of any meaningful supportive relationship with him. The absence of a truly meaningful relationship with the father is demonstrated by the record. We have noted already the mother's position the father was distanced as a parent. The father defended this not at all. He made no argument either in his testimony or by his questions that he was ever a primary care parent or that it was other than the mother said it was. He offered no testimony as to the good times he has with Stephanie or activities which they share on which we could have based questions to Stephanie to develop her preference when we talked with her. The father gave us nothing other than her preference. Stephanie similarly gave us nothing but the expressed preference. Again, there is considerable irony here. The record discloses Stephanie's love of animals, for example, is actually

thwarted by her father. One particular example being when the mother tried to get Stephanie into a horseback riding program as developing her love for animals and her self-esteem. The father refused to participate or encourage it when Stephanie was in his household. No testimony is offered as to activities where the father and Stephanie really relate. It seems to be the household and lifestyle which is preferred - a household and lifestyle which we reject as inappropriate.

For all of these reasons, Stephanie's expressed desire to be with her father is both questionable as to its origin and certainly contraindicated as in her best interest. Regrettably, we also conclude an enforced separation from her father is absolutely essential to real treatment taking place with even a remote chance of success.

This is further demonstrated by our final hearing on June 20, 2000. As we noted at the outset, we deferred a decision on Stephanie's participation in the Partial Hospitalization Program as part of the larger custody issue. We signed a Temporary Order (both so the program could begin and in the hopes the parents could agree). All prior witnesses had testified the Partial Hospitalization Program was in Stephanie's best interest for school. It was clearly recommended by the professionals. As might have been expected, however, Mr. Kearns contested Stephanie's participation in this program notwithstanding her admitted difficulties with socialization and school. Instead, Mr. Kearns believes she should have the summer "off". The June 20<sup>th</sup> hearing ensued limited to Stephanie's non/participation in the program. The testimony produced one particularly interesting exchange which is symbolic of much of this case. At hearing, Laura Chandler, the Director of the Home Nursing Program was subjected to her program being criticized by Mr. Kearns. Ms. Chandler (being new to this litigation) was visibly surprised at Mr. Kearns' venom



directed toward her program. In obvious frustration she offered it appeared Mr.

Kearns was bent on demonstrating her program had no value and belittling it. Mr.

Kearns replied "that's my job." It was up to the witness to then offer to Mr. Kearns

that his "job" was to act in Stephanie's best interest. That is the position in which we

find ourselves in this case. Whether we are dealing with Stephanie's preference for

Mr. Kearns or Mr. Kearns' real interest in Stephanie as opposed to his agenda we are

left uncertain. We can only say that as graphic as we found the questions of Mr.

Kearns as demonstrating an agenda his demeanor in the courtroom was even more

graphic in demonstrating that agenda - whether in Stephanie's best interest or not. We

do not know where the agenda stops and legitimate interest in Stephanie begins. The

two have become as one.

We have struggled mightily with this case. Stephanie is alienated from

her mother. As such, we have considered placing Stephanie with Mr. Kearns to see

how it might go. Notwithstanding there might be gain in the short term, such a

decision could not be justified as in Stephanie's best interest. Stephanie is ill and the

time to experiment is past. We can understand Mr. Kearns' frustration with being

excluded from Stephanie's treatment initially. However, confronted with the ultimate

disagreements which exist between any two parents (under even the best of

circumstances) one always has to get on the team and play ball. This Mr. Kearns has

steadfastly refused to do. As such, he has not in any sense earned the right to serve as

primary care parent. He is completely obstinate and it is this very obstinance - as

much as whether he is right or wrong - which dooms his position before this Court.

In so holding, we are aware of the obvious dangers. First, since we are

dealing with a child who is not stable, we cannot guarantee her reaction to an Order

which is not her expressed wish. We have considered this decision may trigger an

event which could cause Stephanie to require a residential treatment facility. Indeed, the opinion of the two most recent medical treaters (as noted previously in this Opinion) is that a residential treatment facility is needed now irrespective of any Opinion. We would gladly order a residential treatment facility now if the parents would agree to it. They will not and thus force this Court to risk the consequences. A second risk is the alienation between Stephanie and her mother is so great this decision will fail over time due to Stephanie's inability to adjust and participate in treatment. This is a risk which we must take as worth taking.

We observe the mother as providing and likely to continue to provide a supportive, structured, and disciplined environment together with a good approach to treatment and a substantial work ethic which she herself exemplifies. We find no similar support in the father's household on any of these issues. Stephanie deserves a chance. We are well satisfied if we choose the father we deny any chance. She will simply live with her difficulties (unsupported and unaddressed). No child deserves this. No child deserves to have a Court abrogate its responsibilities and allow her to choose out of naivete or the self-indulgence common to children what is easiest. We have grave concerns in the short term. No possible decision totally avoids those concerns and, in fact, we concede Stephanie could do better (conceivably) short term (very) with the father. Under the law, however, we are charged to choose what we believe is the best long-term course for Stephanie and, accordingly, enter the following Order.

### ORDER

NOW, this 6th day of JULY, 2000, the above-captioned matter having come before the Court for hearing, and the Court determining that the

father's Petition for Primary Custody of Stephanie Kearns should be denied, and the mother's Request for Primary Custody granted. Accordingly,

It is **ORDERED, DIRECTED and DECREED** that the Prayer of the mother's Petition is **GRANTED** and Stephanie shall forthwith be in the primary care of her mother. Arrangements for supervised visitation through Sandy Fluke shall be made. Visits are to be one (1) time per week for one (1) hour at the beginning with Attorney Mears to assist in arranging them. These visitations at the outset shall be closely monitored to make certain that Stephanie's treatment is in no way endangered by the father's attitude. If he is not supportive of Stephanie's present needs and home life even this limited contact will be suspended as it would be incredibly destructive to her. If visits go well, they may be increased.

We note again our dismay at entering such an Order, but the conduct before us is unprecedented in our experience. Slim as it may well be, the mother offers the only real chance for Stephanie to grow and realize her potential. She also offers a safe place from which Stephanie will get help when needed. In that regard, we ask the mother to consider hospitalization for Stephanie if it is indicated as best. The custody decision is made. She must now act to protect Stephanie's interests as best she is able as we have in offering her this opportunity. The partial hospitalization plan is **ORDERED**.

BY THE COURT:

  
\_\_\_\_\_ J.