

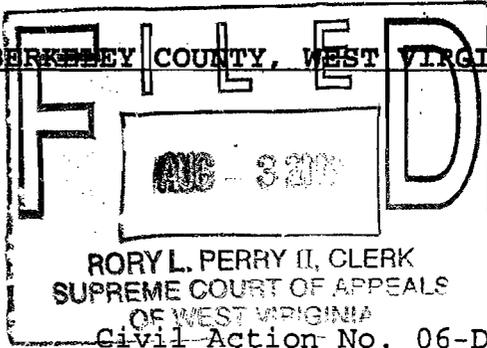
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BERKELEY COUNTY
CIRCUIT CLERK

2008 NOV 21 PM 3:48

VIRGINIA M. SINE, CLERK

~~IN THE FAMILY COURT OF BERKELEY COUNTY, WEST VIRGINIA~~



IN RE: THE CHILDREN OF:

DIANNA BREKKE STORRIE,

Petitioner,

and

CHRISTOPHER MICHAEL SIMMONS,

Respondent.

FINAL ORDER DENYING RELOCATION

This matter came on for decision this 21st day of November, 2008, upon the Petitioner's duly filed and served Notice of Relocation and Motion to Modify; upon Respondent's Counter Motion to Modify; upon the papers and pleadings filed herein; upon the appearance before the Family Court Judge on the 14th day of November, 2008, of the Petitioner in person and by counsel, Joseph B. Cordell, and the Respondent in person and by counsel, Robert D. Aitcheson.

It appearing to the Court upon the record that this cause has regularly proceeded according to the West Virginia Code and the West Virginia Rules of Civil Procedure, that all fees have been paid, that this cause has now matured for hearing, and that service

of process has been properly had.

11/21/08
J. Cordell
R. Aitcheson

Whereupon the Court heard testimony of the parties and their witnesses. Following conclusion of the hearing, the Court reviewed

the evidence, the Parenting Plan Home Study of Susan Lohman, the Psychological Evaluation of Dr. Bernard Lewis, and reviewed the 2 CDs of the videotaped deposition of Dr. Lewis taken November 11, 2008.

Based upon the evidence and the papers and pleadings, the Court finds:

1. That this matter involves the parties' children, namely, Austin Simmons, born November 4, 2001, and Hunter Simmons, born July 15, 2003.

2. That Petitioner seeks to relocate with the children to North Carolina, where her husband, Robert Ricks, is currently stationed with the Marines.

3. That Respondent objects to relocation, maintaining it would impede his relationship with his children and be harmful to them.

4. Reverend Warren Watts testified he has served as parenting coordinator for the parties for about the last 2 years; he observed no signs of Petitioner alienating the children from Respondent; both parties know how to push each other's buttons and have exposed the children to some of their discord; these are loving children who have a loving relationship with the parties, their significant others, and grandparents; it would be unsafe for children these ages to ride in the front seat of a car; parents should not let

children's ear wax buildup; they should not expose children to profanity, including a belt buckle that has on it "f*ck off"; parents are obligated to provide moral guidance; children's close association with one who hates life and people could be detrimental; and the children would be traumatized if taken from either parent.

5. Dianna Storrie testified she has been married to Robert Ricks 1 ½ years, he was re-stationed to North Carolina September 2008, she believes he can stay there the remainder of his military career, he gets deployed every 2 years for 6 months, his next deployment being April 1, 2009, he has a very close relationship with the children, he previously babysat for the children and lived with Petitioner and Respondent when they were married, he killed a cat with a hammer after the cat had been hit by a car and was screaming in pain, she misunderstood the law and transported the children without carseats but will no longer do that, she did wear the belt buckle with profanity on it but the children did not notice it and she has no problem getting rid of it, there is a picture of her on MySpace with her raised her middle fingers but the account is private and not accessed by the children, she acknowledged the pictures of child's accumulated ear wax and long fingernails, she agreed to her son's dyed Mohawk haircut at his request and claims Respondent approved it, she promotes a

relationship of the children with Respondent and he can see them in North Carolina in addition to his times here, she would bring the children here once a month, she does not tell the children there is no God, she would be forced to stay here if the Court does not allow relocation, she took the children to their meeting with Dr. Lewis, the children love Respondent and want frequent time with him, the children have a good relationship with the paternal grandparents and with Annie Clark, Respondent's significant other, Sgt. Ricks' deployment could be more than 6 months.

6. Respondent testified he began to feel Warren Watts was biased against him, Petitioner knew about the seatbelt problem but would not address it, 12 hours of driving to see him over a weekend is not best for the children, the arrangement Petitioner proposes would be very different from the current situation, he gets to all the children's weekend sports games and to as many during the week as he can, he and the children do extracurricular things together and they attend Sunday church together, he has done all the driving to exchange the children except a couple times, his parents have a very close relationship with the children and have been part of the children's lives since birth, the children have a good relationship with Annie Clark, he offered to buy Petitioner car seats for the children and she declined, there is no guarantee Robert Ricks will continue to be stationed in North Carolina.

7. Matters of particular significance to the Court as reported by Ms. Lohman in her October 20, 2008, Home Study, which was admitted into evidence, include: both parties provide appropriate housing for the children, and the children are happy and comfortable with the parties and their significant others; the children want continued parenting time with their father, and they report they get confused when he tells him mother will not let them see him if they move away; relocation would impact on Respondent's ability to attend his sons' school and extracurricular programs; the children crossing the street alone and being transported out of compliance with seatbelt laws "present safety concerns"; there will be more deployments and possible relocations during Robert Ricks' military career; Petitioner has no extended family in Jacksonville, North Carolina; travel time back and forth would be exhausting for all; if Robert Ricks would agree to travel back and forth on his weekends off, the children would have more family time and less travel time on the road; though she did not make a recommendation regarding relocation, she noted that for Petitioner to remain here where she and Respondent "...could share custodial allocation of their sons would be the most reasonable and practical move." (at 22).

8. Dr. Lewis unsuccessfully sought with the aid of Respondent's counsel to gain the participation of Petitioner and

Robert Ricks in the evaluation process; he attempted to include all relevant persons in the process; he evaluated the children's relationship with Respondent, the degree of bond between the children and Respondent, and the potential damage to that bond from Petitioner's relocation; it is parents' duty to keep children safe in a vehicle; Petitioner's seeming resistance to appropriate seatbelting raises concerns about whether she is adequately addressing the children's safety; it is not appropriate for a parent to wear a belt buckle which contains profanity around her children; it is highly unusual for a 5 year old to have a dyed Mohawk haircut, and it could set up a child for being teased and bullied; exposure of children to a parent or parent figure who says he hates life and people is of concern to him; both children clearly and spontaneously told him they wanted regular, alternating week, time with their dad; the children did not say anything that would suggest Respondent told them at all what to say, and, in fact, Petitioner brought the children to the interview; the children have a very close relationship to their father and are strongly bonded with him, and they were animated when they talked about their activities with him; moving 6 hours away "would be detrimental" to their bond with Respondent, it would "seriously interfere" with their relationship; it would remove the children from a significant part of their lives and would practically remove

the Father from their school activities, sports and extracurricular activities; it "would remove him to a large degree as an emotional support figure for the children"; he would have a "significantly decreased impact" on their lives; Respondent shows no signs of psychopathology; he absolutely does not have any form of oppositional defiant disorder; he concluded unequivocally that a move to North Carolina would not be in the children's best interests-it would harm the children and would harm the relationship between the children and their dad, as well as their relationship with their paternal grandparents and Annie Clark; the problems would increase if Robert Ricks had to relocate from North Carolina.

9. In applying the relocation statute, W.Va. Code §48-9-401, et seq., the Court concludes the relocation does significantly impair Respondent's ability to exercise responsibilities he has been exercising; it is not practical to revise the parenting plan to both accommodate relocation and maintain the same proportion of custodial responsibility for each parent.

10. Petitioner has been exercising a significant majority of custodial responsibility, and relocation is in good faith and for a legitimate purpose and to a reasonable location in light of that purpose. Nonetheless, the Court must ultimately look to the children's best interest. W.Va. Code §48-9-403(d).

11. The overwhelming weight of the evidence establishes that relocation to North Carolina is not in the children's best interests. It would necessarily and significantly impair the strong bond of Respondent with the children, and it would notably impair their established relationships with extended family, including the paternal grandparents and Annie Clark.

It is, therefore, ADJUDGED and ORDERED, as follows, subject to continuing judicial modification:

ORDERED that the Petitioner's request to relocate is hereby DENIED.

ORDERED that the provisions of prior orders shall remain in full force and effect except as modified by the terms of this Order.

ORDERED that Petitioner's request for attorney's fees for delays to relocation caused by this litigation is hereby DENIED.

ORDERED that each party shall pay one-half of the \$2,695.00 fees incurred for the services of Dr. Bernard Lewis.

ORDERED that Petitioner shall at all times transport her children only in full compliance with West Virginia seat safety laws.

ORDERED that the scheduled December 1, 2008, proceeding at which the Court was to recite its ruling on the record is hereby CANCELLED.

Objection to all adverse rulings is noted.

It appearing to the Court that nothing further remains in this matter and that all costs are paid, it is ORDERED that this matter be retired from the docket and placed among causes ended except for such matters regarding custody, support and maintenance as may be brought on by proper notice to the parties.

THIS IS A FINAL ORDER WHICH ANY PARTY MAY APPEAL. AN APPEAL MUST BE FILED IN THE CIRCUIT CLERK'S OFFICE IN THIS COUNTY. A PETITION FOR APPEAL TO THE CIRCUIT COURT MAY BE FILED BY EITHER PARTY WITHIN 30 DAYS OF THE DATE OF ENTRY OF THIS FINAL ORDER.

TO APPEAL DIRECTLY TO THE SUPREME COURT, **BOTH** PARTIES MUST FILE, WITHIN 14 DAYS OF THE DATE OF ENTRY OF THIS FINAL ORDER, A NOTICE OF INTENT TO APPEAL AND WAIVER OF RIGHT TO APPEAL TO CIRCUIT COURT. IF ONLY ONE PARTY TIMELY FILES A NOTICE OF WAIVER AND APPEAL TO THE SUPREME COURT, THE APPEAL WILL BE TREATED AS A PETITION FOR APPEAL TO THE CIRCUIT COURT.

The Clerk shall enter the foregoing as of the day and date first hereinabove written and shall mail attested copies to the Petitioner, c/o Joseph B. Cordell, Esq., and to the Respondent, c/o Robert D. Aitcheson, Esq.



William T. Wertman, Jr.
Family Court Judge

Scales

BERKELEY COUNTY
CIRCUIT CLERK

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA
DIVISION II 2009 JAN 23 PM 2:39

IN RE: THE CHILDREN OF:

VIRGINIA M. SINE, CLERK

DIANNA BREKKE STORRIE,
PETITIONER,

Civil Action No. 06-D-674
Judge Wilkes

V.

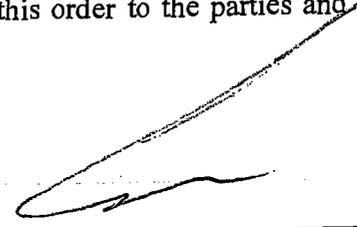
CHRISTOPHER MICHAEL SIMMONS,
RESPONDENT.

ORDER DENYING APPEAL

This matter comes on this 23 day of January 2009, pursuant to the Petition for Appeal filed by Petitioner, by counsel Cinda L. Scales, Esq. Upon review of said petition, the court file, and the recorded record below, the Court is of the opinion to deny said appeal. The Court notes the exception of the parties to this ruling.

Therefore it is hereby ORDERED that the appeal filed in this matter is hereby denied, this constituting a final order.

The Clerk shall provide attested copies of this order to the parties and counsel of record, if any.



CHRISTOPHER C. WILKES, JUDGE
TWENTY-THIRD JUDICIAL CIRCUIT
BERKELEY COUNTY, WEST VIRGINIA

A TRUE COPY
ATTEST

Virginia M. Sine
Clerk Circuit Court
S. Vicki L. Robinson
Deputy Clerk

*1/23/09
cc
C. Scales
R. Robinson*