

SEP 28 2006

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TRIBAL COURT  
OF THE  
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY  
NNEA A. FERCELLO  
CLERK OF COURT

COUNTY OF SCOTT

STATE OF MINNESOTA

In Re the Matter of:

Court File No. 549-05

[REDACTED]

Minor Child.

Derek Anthony Karlstad,

Plaintiff,

and

Stormy Knight and  
Donald Gamber, Jr.,

Defendants.

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**MEMORANDUM DECISION,  
AMENDED FINDINGS OF FACT, AMENDED CONCLUSIONS OF LAW, AND  
AMENDED ORDER**

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On August 21, 2006, the Court entered a Memorandum Decision, with Findings of Fact, Conclusions of Law, and an Order. The Order expressly left open two matters: the requirements that must be met in order for the Plaintiff, Derek Anthony Karlstad, to have unsupervised visitation with [REDACTED] and the arrangements that the parties should make with respect to a parenting consultant or a parenting mediator. The Court gave the parties until September 18, 2006 to provide the Court with their thoughts on those two issues.

Thereafter, the Defendants, Stormy Knight and Donald Gamber filed a motion seeking to amend the Findings, Conclusions and Order; and by letters dated September 18, 2006, both the Defendants and the Guardian *ad Litem* wrote the Court concerning the

visitation and mediator issues. In their motion to amend, the Defendants urged the Court to adopt additional findings of fact concerning the qualifications of Dr. Terri Romanoff-Newman, concerning Dr. Romanoff-Newman's testimony during the August 17, 2006 hearing in this matter, and also concerning the testimony of the Guardian *ad Litem* during the hearing.

On September 19, 2006, the Court held a hearing on the Defendants' motion and on the visitation and mediation issues. The Defendants were represented by Mr. Peter Horesji, and the Guardian *ad Litem* also participated. Neither the Defendants nor the Plaintiff attended.

1. The Defendants' Motion.

During the August 21, 2006 hearing, Mr. Horesji informed the Court that the Defendants brought their motion out of concern that the Court's August 21, 2006 decision might be the subject of collateral attack, under the Indian Child Welfare Act, 25 U.S.C. §1901 – 1963 (2006). The Defendants' motion sought a finding that Dr. Romanoff-Newman "qualified to provide expert opinions regarding the parties, their ability to parent, their mental health, and the bests [sic] interests of [REDACTED] [sic] as it relates to legal and physical custody". They asked the Court to find that Dr. Romanoff-Newman testified that awarding custody of [REDACTED] to the Plaintiff likely would result in serious emotional or physical damage to the child, and that it is unlikely that Mr. Karlstad will be able to change his behavior. The Defendants specifically asked the Court to find that Dr. Romanoff-Newman's testimony was "clear and convincing" in this regard. The Defendants also sought findings that Dr. Romanoff-Newman testified that it would be in the "best interests" of [REDACTED] under the Domestic

Relations Code of the Shakopee Mdewakanton Sioux (Dakota) Community, that she be in the sole legal and physical custody of the Defendants, and also that the Guardian *ad Litem* had testified that awarding the Plaintiff sole physical custody at the present time would likely cause the child serious emotional and physical damage.

Two sorts of issues are raised by the Defendants' motion. The first sort is straightforward, and can be phrased with as follows: did Dr. Romanoff-Newman and the Guardian *ad Litem* testify during the August 21, 2006 hearing as the Defendants suggest? The second sort cannot be answered simply by reference to the transcript, but also can be phrased with a question: what is the appropriate scope of expert testimony in a matter such as this?

As to the first set of questions, Dr. Romanoff-Newman did testify that "awarding physical custody of [REDACTED] to the Plaintiff] will likely result in serious emotional and physical damage" to the child. (Transcript, p. 58). She expressed the opinion that it was "fairly unlikely" that the Plaintiff could mature and acquire additional parenting skills, but also that if he would be able to do so "if he had help". (Transcript, p. 92). She testified that she had modified her view with respect to the present desirability of a joint custodial arrangement for a variety of reasons. (Transcript, pp 80 – 82, 87 – 89). And the Guardian *ad Litem* testified that in her opinion awarding sole physical custody of [REDACTED] to the Plaintiff at this time would result in "serious harm, whether it be physical or emotional" to the child, because of the Plaintiff's presently limited resources. (Transcript, p. 135). The fact that those statements were made during the hearing, on the record and under oath, is not fairly disputable.

As to the second issue -- the permissible expert testimony -- a review of the transcript of the August 21, 2006 hearing leaves no doubt as to Dr. Romanoff-Newman's professional qualifications; and the work that she did with the parties in this case clearly qualifies her to provide expert testimony concerning both the parties' psychological makeup and their present ability to provide proper parenting for [REDACTED]. Testimony of that sort is well within the bounds of proper expert testimony.

However, it is the Court's view that testimony with respect to what constitutes the "best interests" of [REDACTED] is outside those bounds. The question of what is "in the best interests of a child" is an issue of law, under the Domestic Relations Code of the Shakopee Mdewakanton Sioux (Dakota) Community, and therefore is not the proper subject of expert testimony. *Cf. Marx & Co., Inc. v. Diners' Club, Inc.*, 550 F.2d 505 (2<sup>nd</sup> Cir. 1977).

## 2. Visitation.

In response to the Court's request for the parties' views with respect to the Plaintiffs' visitation with [REDACTED] although the recommendations differed somewhat in their detail, both the Defendants and the Guardian *ad Litem* recommended that unsupervised visitation not take place until the Plaintiff has completed a new chemical dependency evaluation and has complied with all recommendations from such an evaluation; that he be able to demonstrate several months of sobriety; and that when unsupervised visitation begins, it progress from shorter to longer visits. The Defendants also recommended that thereafter the Plaintiff be subject to random drug testing, at the Defendants' request (with the costs to be borne by the Plaintiff if the test proves positive, and by the Defendants if the test proves negative). The Guardian *ad Litem* made no

recommendation with respect to ongoing testing at the Defendants' behest, but did recommend that the Plaintiff complete a parenting skills class as a precondition to unsupervised visitation.

During the hearing, the Court expressed concern about the logistics involved in the present visitation system. The Defendants presently are obliged to bring [REDACTED] to the Alex and Brandon Safety Center on a scheduled basis; and when the Plaintiff has not come to the Center, the Defendants' trip and time has been wasted. On the other hand, the Plaintiff on occasion has had difficulty communicating with the Defendants, when he has known that he would be obliged to miss a visitation, because he is barred, by a Restraining Order from the Minnesota District Court, from communicating directly with the Defendants, and his alternative – communicating with the Alex and Brandon Center, and asking the Center to contact the Defendants – has posed problems because of the times that the Center is open.

The Court therefore asked the Defendants whether they would consider a change in the visitation arrangements, whereby the Plaintiff would contact the Defendants to notify them that he intended to exercise his visitation rights, and the Defendants would waive the non-communication order for that limited purpose. On September 19, 2006, Mr. Horesji notified the Court that the Defendants would agree to that arrangement, provided that any telephone call from the Plaintiff be made at least one hour before visitation would begin. The Defendants also asked that they be given a telephone number where they could reach the Plaintiff, if an emergency kept them from bringing [REDACTED] [REDACTED] to the Center.

3. Parenting Mediation.

The Guardian *ad Litem*, in her September 18 letter, provided the Court with contact information concerning possible parenting mediation services; and the Court considers that information to provide an adequate basis for establishing an Order with respect to that subject.

For the foregoing reasons, the Court amends its August 21, 2006 Findings of Fact and Conclusions of Law as follows:

Finding of Fact No. 28 is amended to read as follows:

28. Dr. Terri Romanoff-Newman is qualified as an expert to provide expert opinions regarding the parties, their ability to parent, and their mental health. As part of the psychological evaluation conducted by Dr. Terri Romanoff-Newman, the Minnesota Multiphasic Personality Inventory 2 (MMPI-2) was administered to Derek Karlstad, Stormy Knight, and Donald Gamber. Dr. Romanoff-Newman's report and testimony indicated that Derek Karlstad's MMPI-2 test was valid – that he had honestly answered its questions – and that the test results indicated he has clinically diagnosable anti-social personality disorder, characterized by a belief that he can make up his own rules; that he acts without thinking about the consequences; that he tends to take his anger out on those who are weaker than he is; and that he feels discriminated against. Dr. Romanoff-Newman testified that in her view his personal history supported that diagnosis. Dr. Romanoff-Newman testified that awarding physical custody of [REDACTED] to the Plaintiff would likely result in serious emotional and physical damage to the child. She

expressed the opinion that it was "fairly unlikely" that the Plaintiff could mature and acquire additional parenting skills, but also that it he would be able to do so "if he had help". And she testified that she had modified her view with respect to the present desirability of a joint custodial arrangement for a variety of reasons.

Finding No. 37 is amended to read as follows:

37. The Guardian *ad Litem*, in her report and in her testimony, recommended that the Court award joint legal custody and joint physical custody to Stormy Knight and Donald Gamber and to Derek Karlstad, with Derek Karlstad's visitation being supervised until he is able to demonstrate an abstinence from drugs and alcohol. In her testimony, the Guardian *ad Litem* stated that it would be difficult under the present circumstances for Derek Karlstad to have full joint physical custody of [REDACTED] because of his lack of resources, and because he depends on others, particularly his mother, for much of his living situation. The Guardian *ad Litem* testified that in her opinion awarding sole physical custody of [REDACTED] to the Plaintiff at this time would result in "serious harm...whether it be physical or emotional" to the child, because of the Plaintiff's presently limited resources.

The first paragraph of Conclusion of Law No. 1 is amended to read as follows:

1. The minor child, [REDACTED] is the daughter of a member of the Shakopee Mdewakanton Sioux (Dakota) Community, and is eligible to be a member of the Community; therefore, this Court has jurisdiction over this matter pursuant to Chapter IX of the Domestic Relations Code of the Shakopee

Mdewakanton Sioux (Dakota) Community. Clear and convincing evidence establishes that the Defendants Stormy Knight and Donald Gamber should have sole legal and physical custody of the minor child [REDACTED]

AMENDED ORDER

BASED UPON THE FINDINGS AND CONCLUSIONS SET FORTH ABOVE, AND ON ALL OF THE PLEADINGS, EVIDENCE, AND MATERIALS BEFORE THE COURT IT IS ORDERED:

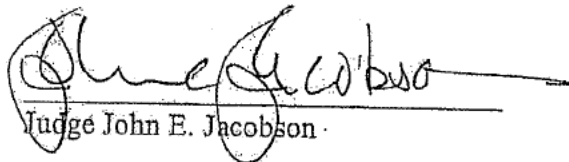
1. The Defendants Stormy Knight and Donald Gamber shall have sole legal and physical custody of the minor child [REDACTED]
2. The Petitioner Derek Karlstad shall have visitation with the minor child [REDACTED] [REDACTED]. Pending further order of the Court, such visitation shall be supervised and shall take place under the terms established in the Court's order of January 30, 2006, provided that prior to each such visitation Derek Karlstad shall notify Stormy Knight and/or Donald Gamber, by telephone, that he intends to exercise his visitation rights, at least one hour in advance of each such visitation.
3. At such time as Derek Karlstad has demonstrated that he is chemical-free and is committed to remain chemical-free, as provided in this Amended Order, he shall have unsupervised visitation on a schedule to be established by the Court at that time. Unsupervised visitation may commence only after (a) Derek Karlstad has completed a chemical dependency evaluation conducted by a person licensed to



conduct such evaluations by the State of Minnesota, with the evaluator having been provided with the information that, during the pendency of these Court proceedings, he provided two hair follicle samples that tested positive for marijuana, and that he informed the Guardian *ad Litem* in these proceedings on August 16, 2006 that he had used marijuana after providing those hair follicle samples; (b) Derek Karlsad has completed all recommendations made by the aforesaid chemical dependency evaluator; (c) Derek Karlstad has submitted hair follicle tests to a testing facility that is licensed by the State of Minnesota to conduct drug testing, to establish that he has been drug free for a period of at least six months following the completion of the aforesaid chemical dependency evaluation; and (d) Derek Karlstad has completed either the Early Childhood Family Education Classes offered at Onamia, Minnesota, or some other comparable parenting skills class.

4. In the event the parties have disagreements with respect to parenting issues, they shall seek to avail themselves of the services of a parenting mediator, such as Duluth Family Mediation (telephone: 218-626-3000), or Cooperative Solutions, Inc., Grand Rapids, MN (telephone: 218-327-4908), or some similar service.
5. The Guardian *ad Litem* in these proceedings is herewith discharged and relieved from any further duties with respect to these proceedings and with respect to [REDACTED] and the parties.

Date: September 27, 2006

  
Judge John E. Jacobson