



LEXSEE 1995 VA CIR LEXIS 1426

Re: Karen Lint v. Stephen J. Lock

Chancery No. 140250

CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

1995 Va. Cir. LEXIS 1426

December 22, 1995, Decided

COUNSEL: [*1] James McConville, Esquire,
Annandale, Virginia.

Dana James Carlson, Esquire, Duvall, Harrigan, Hale &
Hassan, P.L.C., Fairfax, Virginia.

Mark Bodner, Esquire, Fairfax, Virginia.

JUDGES: Jane Marum Roush.

OPINION BY: Jane Marum Roush

OPINION

Dear Counsel:

This matter came on for a hearing on December 6 and 7, 1995 on the appeal of the order of the Juvenile & Domestic Relations Court of Fairfax County entered June 21, 1995 establishing a visitation schedule for the parties' two children.

FACTS

The facts of this case will be briefly summarized. Karen Lint ("Mrs. Lint" or the "Mother") and Stephen Lock ("Mr. Lock" or the "Father") were married on June 7, 1980 in England. Two sons were born of the marriage: Tristan, born April 24, 1984 (now 11) and Charles, born July 20, 1986 (now 9). The couple emigrated to the United States and were divorced on March 16, 1990 in Adams County, Pennsylvania. By agreement of the parties, they shared joint legal custody of the children,

with the Mother having primary physical custody. A visitation schedule was established by the Pennsylvania court that allowed the Father frequent weekly visitation.

In 1992, Mrs. Lint moved to Fairfax County. Mr. [*2] Lock remained in Gettysburg, Pennsylvania, approximately 100 miles away. By necessity, Mr. Lock's visitation became less frequent. Unfortunately, due to the continuing acrimony between Mrs. Lint and Mr. Lock, Mr. Lock's visitation with the children has been the source of continuing disagreement between the parties. Several orders have been entered by the Juvenile and Domestic Relations Court attempting to resolve visitation disputes. Mark Bodner was appointed guardian *ad litem* for the children. A dispute between the parties over the Father's visitation during Spring break 1995 resulted in the instant litigation.

Prior to the June 21, 1995 order that is the subject of this appeal, the Father had visitation with the children every other weekend and the summer was divided between the Mother and the Father. The Juvenile and Domestic Relations Court found that the bi-weekly visitation was not in the children's best interests and reduced Mr. Lock's visitation to every "three-day weekend" (i.e., a weekend which includes a federal holiday), every Spring break, a weekend in either March or April, the entire month of July and a portion of the Winter holiday break. The parties have been [*3] observing this schedule for approximately five months during the pendency of this appeal. The Father objects to the reduction of his visitation from a bi-weekly basis to a monthly basis and asks this Court to restore his bi-weekly visitation.

FACTORS CONSIDERED

In determining an appropriate visitation schedule for Tristan and Charles, the Court has considered each of the statutory factors set forth in *Code § 20-124.3*. The Court will briefly discuss each factor:

1. The Age and Physical and Mental Condition of the Children. Tristan is 11 and Charles is 9. Both have been diagnosed as having Attention Deficit Hyperactivity Disorder ("ADHD") and each is taking the prescription drug Ritalin to control his ADHD during the school year. Each boy has demonstrated stress as a result of the pronounced acrimony between Mr. Lock and Mrs. Lint. The Court has carefully considered the testimony of Barbara Finn, a licensed clinical social worker, who is the therapist to both boys.

2. The Age and Physical and Mental Condition of Each Parent. No evidence was presented that either parent suffers from a mental illness or physical impairment. No evidence was presented as to their respective [*4] ages. Both Mother and Father appeared to the Court to be healthy and "thirty something."

3. The Relationship Existing Between Each Parent and Each Child. Both parents enjoy a good relationship with each of the boys. Both Mrs. Lint and Mr. Lock have remarried and the stepparents appear to the Court to be fine, good-hearted people who enjoy good relationships with the children. Mr. Lock and Mrs. Lint have different approaches to disciplining the children, and they disagree over the need for the boys to take Ritalin to control their ADHD. Despite these differences in parental philosophy, the Court finds that each parent is a loving and fit parent for Tristan and Charles. The Court urges the parents, despite their emotional and geographical separation, to explore family therapy or mediation to once and for all end the acrimony between them for the sakes of their sons.

4. The Needs of the Children, Giving Due Consideration to Other Important Relationships of the Children. The crux of the dispute between Mr. Lock and Mrs. Lint over the bi-weekly visitation versus the monthly visitation is the boys' strong desire to participate in organized sporting activities. Although the [*5] boys were born in England, they appear to be thoroughly Americanized and they very much want to play baseball and (American) soccer. Unfortunately, "pick up" or "sandlot" games are things of the past, and in Fairfax

County these sports are conducted in highly-organized leagues with demanding schedules. These sports schedules interfere with the boys' ability to visit with their father and dampen their enthusiasm for such visits. Ordinarily, such extra-curricular activities should not be permitted to displace visitation with the non-custodial parent. Nevertheless, in this case, the children's therapist and the guardian *ad litem* strongly believe that these organized activities are very important to the boys and help give them self-esteem that they cannot achieve in the classroom because of their difficulties with ADHD.

5. The Role Which Each Parent has Played and Will Play in the Upbringing and the Care of the Children. Mrs. Lint has been the primary physical custodian of the children since the parties' separation when the boys were quite young. Mr. Lock has played an active role in their upbringing and has consistently exercised as much visitation as he is allowed (except [*6] for telephone visitation, which he has not used as much as permitted).

6. The Propensity of Each Parent to Actively Support the Children's Contact and Relationship with the Other Parent. As mentioned above, the intense acrimony between the parties has adversely affected their ability to support each other's parental role with the children. Mr. Lock testified that he has never had a substantive discussion with Mrs. Lint concerning their sons. Time and time again during the trial, the Court was struck by the fact that the only time that the couple exchanges information about the boys is through their testimony during their frequent court appearances. Mrs. Lint has recently begun sending information packets to Mr. Lock concerning the boys' activities and school work. Mr. Lock has not responded to any of Mrs. Lint's overtures. The respective stepparents are more rational and supportive; but they appear to be wearying of the constant bitterness and litigation, with its concomitant emotional and financial toll.

7. The Reasonable Preferences of the Children. Both the children's therapist and the guardian *ad litem* testified that the boys very much want to visit with their [*7] father, but not on a bi-weekly basis which is disruptive to them and their activities. Ms. Finn testified that both boys enjoyed the long visitation with their father during the Summer of 1995, which included a pleasant visit with their paternal grandparents in England, and that they "settled down" and are improving under the

less frequent visitation schedule that has been in place since June 1995.

8. **Any History of Family Abuse.** There was no evidence presented as to any history of family abuse, as that term is defined in *Code § 16.1-228*.

9. **Other Factors.** The Court has considered such other factors as deemed necessary and proper to the determinations contained herein, including the recommendations of Mr. Bodner, the guardian *ad litem*.

CONCLUSIONS

After considering the testimony of the witnesses, and having observed their demeanor and made determinations as to their credibility, and having considered the recommendation of the guardian *ad litem*, and all of the statutory factors, the Court finds that the best interests of the children would best be served by the following visitation schedule:

1. Mr. Lock shall have visitation with the children every weekend [*8] in which either the Friday or the Monday is a federal holiday. The weekend shall begin at 7:00 p.m. on the last day of school before the weekend and shall conclude at 7:00 p.m. on the evening that the three-day weekend concludes. From time to time, Fairfax County Public Schools are in session on a federal holiday. Mr. Lock may elect to keep the children out of school on such a holiday so that he and the children may enjoy the full three-day holiday.

2. Mr. Lock shall have visitation with the children the entire Spring break observed by Fairfax County Public Schools. Spring break shall begin at 7:00 p.m. on the last day of school before the break and conclude at 7:00 p.m. on the last day before school resumes.

3. Mr. Lock may elect to have an additional two-day weekend (Saturday and Sunday) in either April or May, whichever month does not include Spring break (or the majority of Spring break if Spring break includes portions of both March and April). Mr. Lock shall examine the school schedule and select this weekend, and notify Mrs. Lint thereof, no later than February 15 of each year.

4. Mr. Lock shall have visitation with the children on the two-day weekend the Sunday of which [*9] is Father's Day.

5. If any of the children's sports or scouting activities

falls on a weekend during which Mr. Lock has visitation, Mr. Lock's visitation shall take precedence. Mr. Lock may elect either to accompany the children to such activities, or not to attend such activities in favor of visitation in Gettysburg.

6. Mr. Lock shall have summer visitation with the children from 9:00 a.m. on July 1 to 7:00 p.m. on August 7 each year.

7. Mr. Lock shall have visitation with the children on the Thanksgiving weekend (7:00 p.m. Wednesday to 7:00 p.m. Sunday) in odd-numbered years. In even-numbered years, Mr. Lock shall have visitation with the children for the Christmas holiday, defined as beginning at 7:00 p.m. on the first day that school is not in session during the break and ending at 7:00 p.m. on the evening before the last day that school is not in session. Mrs. Lint shall have the children at such holiday times that Mr. Lock does not have visitation.

8. Mrs. Lint shall transport the children to Mr. Lock's house at the commencement of any period of visitation. Mr. Lock shall transport the children back to Mrs. Lint's house at the conclusion of any period of visitation.

9. The [*10] children shall be allowed to have unrestricted, unmonitored telephone access with the parent with whom they are not then residing. The non-custodial parent shall have the right to call the children no more often than once a day prior to the children's bedtime. The children shall be permitted to call collect the non-custodial parent as reasonably often as the children wish.

10. Mr. Lock may attend any of the children's sporting or scouting activities, regardless of whether they occur on a day on which he is entitled to exercise visitation. Mr. Lock shall give Mrs. Lint 48 hours' advance telephonic notice of his intention to attend such an activity.

11. Visitation shall occur at such other times as the parties may agree.

It will further be ordered that neither party is to disparage the other in the presence of the children, that all visitation exchanges be cordial, that the parent transporting the children accompany them to the door of the other parent and assure that they are safely inside in the presence of an adult before leaving, that the children

shall not be used to carry either oral or written messages between the parents, that the parties are to advise each other regularly [*11] as to the boys' school and extra-curricular activities.

Will counsel for Mrs. Lint please prepare an order, forward it to counsel for Mr. Lock and the guardian *ad*

litem, and submit it to the Court on or before the close of business on January 5, 1996?

Sincerely,

Jane Marum Roush