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IN THE COURT OF APPEALS OF FRANKLIN COUNTY, OHIO

Monica Caner,	:	
	:	
Plaintiff-Appellee,	:	
v.	:	No. 78AP-581
Acar Caner,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on February 6, 1979

MR. VINCENT N. DePASCALE,
2000 West Henderson Road,
Columbus, Ohio 43220,
For Plaintiff-Appellee.

MR. ACAR M. CANER,
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Columbus, Ohio 43214,
Pro se.

THOMAS J. ENRIGHT
CLERK OF COURTS

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FILED
COURT OF APPEALS
FRANKLIN CO., OHIO

MCCORMAC, J.

On April 14, 1978, the parties herein were divorced and appellee was awarded custody of the three minor children of the parties. A separation agreement entered into between the parties was made a part of the decree. Specifically in the decree, the following exceptions were made:

"The matters of children's religious training and income tax exemptions for children shall be heard by this judge at a later date upon motion."

And further:

"* * * except under Art. VI(D), \$290.00 obligation on mortgage shall be determined at a later date upon motion."

On May 19, 1978, appellant moved the court to order that:

"* * * (1) the minor children of the parties be reared under the principles and traditions of the Islamic Faith, (2) that Defendant be entitled to claim the minor children as exemptions for purposes of personal income tax."

On June 8, 1978, appellee served a motion, as follows:

"Now comes the Plaintiff herein and moves the Court for an Order requiring the Defendant to pay her \$290.05 instanter.

"Further moving, the Plaintiff moves the Court for an Order requiring that the Defendant return her passport, and all the immigration cards and citizenship books on the children.

"Further moving, Plaintiff requests an Order requiring the return of all of her personal papers, and at least copies of all of the children's pictures he has taken.

"Further moving, Plaintiff requests that if the Court grants Defendant's Motion on income tax deductions that child support be raised to \$30 per child per week."

The motion was heard by the court who entered the following rulings:

"1. The minor children shall receive religious training through each parent, during the periods when the children are under each parent's respective care and control, according to the desires of each parent. The children shall then be better able to make their own choices in the future when they are of sufficient age to make such decision for themselves.

"2. The matter of claiming the children as dependents for federal income tax purposes shall

be determined by the applicable Internal Revenue Service Regulations.

"3. The defendant shall pay to the plaintiff the sum of \$290.05 forthwith as reimbursement for one month's mortgage installment payment pursuant to Article VI D of the Separation Agreement.

"4. The children's immigration papers shall be made available to either party as needed in implementing Article IV wherein the minor children Ergun and Erden shall become American citizens. Since the defendant denied knowledge of the whereabouts of plaintiff's passport, no order is made with respect thereto.

"5. Defendant shall furnish plaintiff, within a reasonable time, one copy of each picture of the children which he may have in his possession and which was taken prior to the parties' separation.

"6. Since the Court did not sustain defendant's motion re dependency for income tax purposes, plaintiff's motion for an increase in child support is moot."

From the order of the trial court upon the motions, defendant has appealed, setting forth the following assignments of error:

"1. The trial court erred in granting plaintiff-appellee's oral motion for certain payments by defendant-appellant of mortgage installments and the transfer of items of personal property (immigration papers and photographs) without notice to defendant-appellant;

"2. The trial court erred in failing to make specific conclusions of law as to the constitutionality of an order requiring defendant-appellant's children to continue their instruction and practice of the Islamic faith; and

"3. The trial court erred in authorizing the change of religious training received by the children of the marriage."

Appellant first argues that appellee's motion was not served upon

him as required by the Civil Rules, and that, therefore, the trial court erred in granting relief based thereon. This assignment of error is not sustained by the record. The record shows that plaintiff's motion was filed in the trial court on June 8, 1978, and that it contains a certificate of service by mail on June 7, 1978, to William J. Abraham, who was then attorney for defendant. There is nothing in the record to indicate that the motion was not properly served or that appellant objected to the hearing upon the motion.

Appellant's first assignment of error is overruled.

Appellant next contends that the trial court erred in failing to make specific conclusions of law as to the constitutionality of an order requiring his children to continue their instruction and practice of the Islamic faith. This assignment of error is not well taken. Civ. R. 52 specifically provides that findings of fact and conclusions of law are unnecessary upon the motions herein. There was no legal requirement for the trial court to state such conclusion, nor does the record show that any request therefor was made.

Appellant's second assignment of error is overruled.

Appellant next contends that the trial court erred in authorizing a change of religious training received by the children of the marriage.

The separation agreement contains no provision concerning the religious education of the children and was specifically deferred for order of the court. The trial court's denial of plaintiff's motion to require the children to be raised in the Islamic faith by their mother, who was awarded custody of the children, is not erroneous. An order to the contrary undoubtedly does violate the First Amendment to the United States Constitution.

In effect, the trial court's ruling is simply a denial of appellant's motion as it states nothing other than what may be done anyway without a specific order to the contrary. During the time minor children are under each parents' respective care and control, their activities, including religious training, are subject to the desires of that parent, absent an order to the contrary. The court did not go further than asked, as no change in the children's religious training was ordered. The court, at this stage, is simply leaving the children's religious training to the discretion of the parent currently in control of the children.

Appellant's third assignment of error is overruled.

Appellant's assignments of error are overruled, and the judgment of the trial court is affirmed.

STRAUSBAUGH, P. J., and WHITESIDE, J., concur.

WHITESIDE, J., concurring.

Although I concur in the judgment, my reason for overruling the third assignment of error varies from that stated by the majority.

In my view, the custodial parent has the right to determine primary matters concerning the minor children, including the religious training that children should receive. It is desirable that the custodial parent confer with and consider the wishes of the noncustodial parent with respect to religious training; however, the noncustodial parent has no right during visitation periods to change the nature of the religious training of the minor children without the consent of the custodial parent.

Here, the trial court conferred a greater right upon appellant

than he otherwise would have had as the noncustodial parent by conferring upon him the right to determine the religious training of the minor children during periods of visitation. Since appellant has been afforded greater rights than he otherwise would be entitled to, the order conferring those rights, even if erroneous, cannot be prejudicial to appellant.

The trial court cannot, consistent with the First Amendment, establish a religion for the minor children, although the court may determine which parent shall have custody of the minor children, and that custodial parent has the right to establish the religion of the minor children, at least in the absence of an agreement or a court order that the noncustodial parent participate in that determination. It is unnecessary in this case to determine if and under what circumstances the court may properly deny the custodial parent the full right to determine the religion of the minor children in his or her custody.

THOMAS J. ENRIGHT
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