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December 17, 1981

Rabbi Sanford Seltzer
Director of Planning and Research
Union of American Hebrew Congregations
838 Fifth Avenue
New York, NY 10021

RE: HORIZON INSTITUTE REPORT, AUGUST 1981

Dear Rabbi Seltzer:

I read with great interest your article, and am currently involved in a case with similar problems. I would like to give you a brief summary of the facts as we know them. The husband was born to Jewish mother and father, raised in an orthodox setting, and maintains strictly, the rules of Kashreth. The mother is a born Roman Catholic. Although she made oral promises prior to the marriage to convert, no such conversion ever took place. The couple was married by a priest. A child was born of the marriage and at eight days, was religously circumsized by a moyel. At fourteen days, the child was baptised in a catholic church. At one year of age, the child was taken to Pittsburgh for an Orthodox conversion complete with immersion at the Mikveh. At the time of the conversion of the child the mother signed a document acknowledging the conversion and agreeing to raise the child as a "Son of Israel". Prior to the child's birth and up to the time of the couple's separation, the husband and wife maintained a kosher home. The husband observed the celebration of holidays, but was not a "regular participant in religious services or the observance of "Shabbat".

Upon separation and subsequent divorce the wife has renounced the Jewish faith both for herself and the child.

During the course of the marriage there was no practice whatever of the Catholic religion by the mother and there was substantial practice of the Judaic tradition by the father.

As you might expect, the mother has custody of the child at present. We do not know with any certainty what the outcome of

litigation will be with regard to this case, however, I must admit that I feel confident that we will not be able to change custody since the mother, at least on the surface, is fit as a parent. We are attempting to obtain sufficient visitation rights to enable the child, at a minimum, to be aware of his father's beliefs and his father's traditions. Unfortunately even this has been fought by the wife to the dismay of the father, and even the wife's attorney.

As you are aware, Pennsylvania has recently enacted legislation granting the courts the statutory authority to award joint custody. I am not certain that this is a solution to the problem but it certainly will make our litigation points stronger.

I would like to direct your attention to a case in Pennsylvania, Ackerman v. Ackerman, 204 Pa. Super. 403, 205 A.2d 49 wherein the husband maintained that there was an oral agreement to raise the children in the Jewish faith. The court held, that absent a written contract they could not enforce the agreement. It is my contention that the case would have been decided in favor of the Jewish father had there been a written agreement. I would also call your attention to Com. ex. rel. Bordlemay v. Bordlemay, 193 A.2d 845 wherein the court held that where one parent practices and the other does not, the court should take cognizance of the stronger religious belief.

At this point in time, we have not completed the research necessary for litigation, and we are still hopeful that the matter can be settled because of the attorneys representing both parties very strongly believe that the child's interests will not be served by protracted custody litigation. I would sincerely appreciate any guidance that you or the Union of American Hebrew Congregations could provide me in this generally uncharted area of the law. I sincerely feel that it is tragic for a parent to take away a child's religious heritage and am planning, in the absence of a settlement, to fight this case and appeal the outcome if necessary.

I am looking forward to your prompt response and again will greatly appreciate any assistance that you can provide.

Sincerely,

BROOKS & SAHLANEY

By Steven D Brooks
Steven D. Brooks
Attorney at Law

SDB:tlmr

MEMORANDUM

From Rabbi David Saperstein

Date January 7, 1983

To Members of the Katz Committee

Copies

Subject January 24th Meeting

file

The next meeting of the Katz Committee will be held on January 24, 1983, at the Union of American Hebrew Congregations, 838 5th Avenue, New York, New York, (corner of 65th) from 5:00 p.m. to 8:00 p.m. We will continue our exploration of what we can do to help protect the Jewish identity of children of intermarriages where, after a divorce, custody is given to the non-Jewish parent.

We will meet over dinner. Several of the members of the committee have been working on their assignments and will be able to bring us up-to-date on their work.

Please fill out the enclosed card and let us know if you will be able to attend. If you did not receive a copy of the minutes, or if you have any questions, please contact me at (202) 387-2800.

For your information, I have also enclosed some relevant materials provided by Rabbi Sanford Seltzer who is in charge of the UAHC's Outreach Program.

Religious Action Center
2027 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D.C. 20036, 202/387-2800

I will _____ will not _____ attend the January 24th meeting of the Katz Committee.

Name _____

Address _____

_____

Telephone Number _____

I will _____ will not _____ attend the January 24th meeting of the Katz Committee.

Name _____

Address _____

_____

Telephone Number _____

an Horizon Institute Report

Union of American Hebrew Congregations 838 Fifth Avenue New York, N.Y. 10021

August, 1981

INTERMARRIAGE, DIVORCE AND THE JEWISH STATUS OF CHILDREN

by Rabbi Sanford Seltzer
Director of Planning and Research
Union of American Hebrew Congregations

Current estimates indicate that upwards of ⅓ of all marriages involving Jews involve persons of another religious faith and that at the very minimum, 30% of all non-Jews who marry Jews convert to Judaism. The data further reveal that the incidence of Jewish men marrying non-Jewish women is from two to four times greater than that of Jewish women marrying non-Jewish men.[1] While no precise figures are available, it would appear that the divorce rate among Jews is rapidly approaching that of the overall divorce rate in the United States, now projected at 40% of all marriages.[2] There are at present no statistics dealing with divorce among couples where one partner has converted to Judaism; neither are there studies comparing these figures with the divorce rate in marriages where both husband and wife are born Jews.[3]

As divorce among Jews married to non-Jews or to persons who have converted to Judaism increases, child custody cases dealing with the religious upbringing of children following a divorce may well become more frequent. As a general rule, mothers retain custody in 90% of all child custody disputes in keeping with long held judicial interpretations of the "tender years" and "best interests" doctrines that women are the more nurturing of the child's natural parents.[4] Since Jewish men are more prone to marry non-Jewish women than are Jewish women to select non-Jewish men as spouses, the legal tradition of awarding custody to the child's mother may have significant ramifications for the Jewish community.

This Horizon Report will examine a number of custody cases contesting the religious identity of children and the impact of the ruling of civil courts upon the Jewish family and the Jewish community. Complications arising from the question of matrilineal-patrilineal determinations of Jewish identity and status will also be addressed, as will the matter of conversion procedures, counseling and orientation provided potential converts to Judaism and their born Jewish spouses as well as couples in a mixed-marriage.

THE LEGAL SITUATION

Legal scholars are generally agreed that the parent obtaining custody is to be granted broad discretion in the religious upbringing of the child unless otherwise ordered and that such judicial intervention is to be restricted to situations where the child will be harmed in some tangible way by the religious doctrines espoused by the custodial parent.[5]

Lee M. Friedman, in an article written in the 1916 edition of the Harvard Law Review, noted: "As between father and mother any religious question respecting the child's religion will be settled by the award of the right of custody. . . ."[6] Friedman added that in the event of the death of the father, it was safe to predict that "the courts will hold that where the surviving mother has the right of custody she has a right to dictate the religious teaching the child shall receive irrespective of any question of the father's religion or his possible wishes on the subject."[7]

Steven M. Zarowny observes: "The court award of custody may seal the child's spiritual future. . . ."[8] In referring to the complexities of these cases and the more than occasional inconsistencies in judicial decisions, he concludes: "The tensions ensuing from such disputes may best be minimized by placing the power to choose religious training for the child fully in the hands of the custodial parent. Courts should not dislodge that power unless such action is necessary to prevent actual or imminent danger to the child's health or safety."[9] Zarowny's concerns are best illustrated by a review of a series of child custody cases focusing upon religious identity and the obligations of the custodial parent.

The *Horizon Institute*, a center for research, policy and planning for the UAHC and its member congregations, provides principled and appropriate Jewish responses to the demands of a complex modern society, and is dedicated to the belief that the Synagogue remains the central institution for the preservation of Judaism and the survival of the Jewish people.

Lynch vs Uhlenhopp—Iowa 1956

In 1956, the Iowa Supreme Court held that a provision in a divorce decree requiring the Protestant wife of a Roman Catholic husband to raise their child as a Roman Catholic, was "void for uncertainty and indefiniteness."[10] A lower court had found the woman guilty of contempt for allegedly violating this provision of the divorce agreement entered into by the couple. The American Jewish Congress had filed an *amicus curiae* brief in behalf of the woman. In rendering its decision, the Supreme Court of Iowa said: "Courts should be slow to place in divorce decrees provisions controlling the religious beliefs of children even granting certainty and constitutionality and consent of the parties."[11] The court added most significantly: "The courts have generally refused to enforce agreement between the father and the mother concerning the religious training of children but have held that the parent having custody is not bound by a previous contract."[12]

Lundeen vs Stremminger—Virginia 1962

The Iowa decision disallowing parental agreements regarding the religious upbringing of children is reflected in a similar ruling by the Supreme Court of Virginia in 1962, in the case of Lundeen vs. Stremminger. The case involved the custody of two children, then seven and five years of age, whose father was Jewish and whose mother was Roman Catholic. A lower court had upheld the validity of a provision in the original divorce decree stipulating that the children be reared as Jews and attend a Jewish religious school as well as synagogue services weekly. The Supreme Court upheld the petition of the children's mother "that such a provision violates section 58 of the Virginia Constitution which guaranteed that no man shall be compelled to frequent or support any religious worship, place or ministry."[13]

It bears repeating, however, that the courts have not been consistent in rulings dealing with the religious upbringing of children thereby compounding the difficulties encountered in the resolution of this matter. In 1969, the New Jersey Supreme Court awarded custody of a couple's two children to the father instead of the mother, even though both parents were born Jews and there was no challenge to the fitness of the mother as the appropriate custodial parent. The parents had written a divorce agreement themselves in which it was stipulated that the children be raised as Jews regardless of the parental marital preferences subsequent to their divorce. The mother had married a non-Jew and moved to Idaho. She now lived 80 miles from the nearest synagogue and some 300 miles from the only other synagogue in the entire state. In granting custody to the father, the court invoked the doctrine of "best interest" stating: "Here religious training is most important and a factor which must be given the most serious consideration in child custody cases."[14]

In Wager vs Wager, a Jewish father successfully enjoined the Jewish woman from whom he was now divorced and who was the custodial parent of their children from enrolling them in a Hebrew School which met on Saturday since he claimed their religious school education interfered with his rights of visitation. The Appellate Court of New Jersey, in ruling in the father's favor, opined that the children would derive greater benefit from their association with the father than from their religious education and "that any deficiencies in the children's religious training may be overcome if the children desire it when they become more mature."[15]

In yet another instance, a New York judge awarded joint custody of their children to a Jewish father and a Thai mother. The children lived with their mother during the week and their father on weekends. In handing down his decision, the judge commented: "While divided custody is not always to be desired, particularly in children of such tender age, the circumstances of these children's parental background would seem to dictate that they become familiar and at ease in the culture and values of both."[16]

Perhaps the most dramatic examples of custody cases impacting upon the Jewish identity of children are those in which the child's mother, a convert to Judaism, declares that she has reverted back to her former faith and now intends to raise children born of the marriage as non-Jews. Such cases are of profound importance, not merely in terms of the well being of children subsequent to the dissolution of a marriage and the maintenance of some family stability, but in terms of the legal status of Jewish conversions in the civil courts of the United States.

Green vs Green

The case of Green vs Green is still pending in the Michigan courts. Here, the plaintiff, a born Jewish father of two children, was married to a woman who converted to Judaism in accordance with both Reform, and later, Orthodox criteria. The two children, both boys, underwent *brit milah*, were given Hebrew names and were blessed from the pulpit of the congregation where the family held membership. The children attended the religious school of the synagogue. The mother, in the course of filing for divorce, has renounced Judaism and has said that

she intends on raising the children as Roman Catholics. The father seeks custody on the grounds that a conversion to Judaism, done voluntarily and of one's own free will, is the equivalent of a legal contract and as such is duly enforceable. In addition, since the couple were married in a Conservative ritual, and signed a *ketubah*, this antenuptual agreement is binding.

In their brief, the attorneys for the plaintiff, the Jewish father argue: "Defendant cannot now dispute the validity of her contract or the enforcement thereof. It matters not what she may decide is right for herself, but that personal decision cannot affect the rights and heritage of her minor children. It is exactly this point that both the conversion certificate and the *ketubah* certificate address themselves to when reference is made to raising children in loyalty and faithfulness to Jewish ideals and beliefs, to Jewish hopes and the Jewish mode of life."[17]

The attorneys for the plaintiff have sought to buttress their arguments by citing the decision of another Michigan court requiring a Jewish husband to grant his wife a *get* in accordance with the *ketubah* they both signed pre-nuptually. In its ruling, the court, after noting that this was the first time such a case had been tried in Michigan, defined the *get* as a "secular instrument" without which the wife could not be released from her marital obligations and "her right to liberty under the 14th Amendment would be destroyed."[18]

Perhaps the most controversial of recent cases involving women who renounced Judaism after conversion is that of Schwarzman vs Schwarzman. Here, a Roman Catholic woman agreed to convert to Judaism as a precondition for her marriage to a Jewish man. She was converted by a Reform rabbi who then married the couple in a Jewish ceremony. The couple had four children, all of whom were named in the synagogue. The woman subsequently divorced her husband, married a Roman Catholic man, renounced Judaism herself and reverted back to Catholicism, adding that she intended to now raise the children as Catholics. Her former husband brought suit enjoining her from rearing the children as Catholics on the grounds that they were Jews by birth and identity by virtue of the prenuptual oral agreement the couple had made, as well as the women's formal conversion to Judaism and the ritual naming of the children as Jews after their births. The father did not seek custody of the children nor did he question the fitness of the mother as the custodial parent.[19] In her defense, the mother asserted that at the time she agreed to convert to Judaism she was under emotional stress and pressure, "that she never truly adopted Judaism as her faith and that upon the termination of the marriage she returned eagerly and wholeheartedly to her original faith."[20] The court ruled in favor of the mother and denied the petition of the Jewish father. It based its decision essentially upon the testimony of an Orthodox rabbi and other *halachic* citations. The court asserted that since the mother's conversion was coerced and did not include the ceremony of ritual immersion, it was invalid, consequently the mother was never Jewish and the children were not Jewish either. The court concluded: "The court finds the defendant mother a fit and proper custodian and that the four children are neither Jewish or Roman Catholic, that the custodian mother is not engaged in changing the religion of the children, that there is no agreement between the parties binding upon the mother so as to direct or control the religious educational upbringing of the children."[21]

THE PROBLEM OF JUDICIAL INTERVENTION

These diverse interpretations and court rulings, as well as the particular circumstances of Schwarzman vs Schwarzman, raise serious questions for the Jewish community. Subsequent to the Schwarzman ruling, Rabbi Joseph B. Glaser, himself an attorney and executive vice president of the Central Conference of American Rabbis, challenged the Schwarzman decision accusing the judge of "arrogating to himself the right to declare Orthodoxy authentic and Reform not."[22] Glaser went on to state that one of the reasons the Central Conference of American Rabbis did not appeal the decision even though to let it stand created a dangerous legal precedent "was the existence of the nightmarish possibility that were it unsuccessful, for whatever reasons, the mischief wrought by this imprudent intrusion into the separation of church and state would be compounded by affirmation at a higher judicial level. . . ."[23]

The unpredictability of such decisions and the complexities of family law have moved others to speak out as well. Andrew S. Watson, professor of law and psychiatry at the University of Michigan, notes: "The law of the family bears the stamp of many conflicting values from the past, randomly and often illogically mixed with newer views about the rights of children. . . ."[24] He adds: "Judicial ignorance of human psychological behavior is bound to cause results in custody cases leaving much to be desired."[25] Steven Zarowny goes even further warning "since the trial judge decision will be reversed only upon a clear showing of abuse a judge might draft his custody order to promote one belief over another and hide his motivation within the wide discretion afforded him by the imprecisions of the "best interests standard."[26] Zarowny's solution, however, that the power to choose the religious upbringing of the child be vested automatically with the custodial parent unless the health or safety of the child is

at stake fails to address the concerns of the Jewish community regarding the Jewish identity of children of mixed-marriages raised and educated as Jews, as well as of children of marriages in which the mother has converted to Judaism and later changes her mind.

DILEMMAS CONFRONTING REFORM JUDAISM

The Reform Jewish community may be especially vulnerable to legal problems involved in child custody cases which focus upon religion. Studies already show that the majority of persons converting to Judaism do so under Reform auspices, usually without the Orthodox requirements of ritual immersion for both men and women and ritual circumcision for men.[27] In addition, an increasing number of mixed-married couples are not only affiliating with Reform congregations, but are raising their children as Jews in adherence to the Reform principle that children born of Jewish fathers and non-Jewish mothers are considered Jewish without conversion if identified as Jews and enrolled in programs leading to Bar/Bat Mitzvah and/or Confirmation.[28]

Given the current divorce rate, it would appear inevitable that Reform definitions of Jewishness would conflict with the custodial prerogatives of non-Jewish mothers who determine to raise children as non-Jews subsequent to a divorce regardless of whether the child has been enrolled in a Reform religious school and identified as a Jew. The implications of the Schwarzman decision regarding the validity of Reform conversions per se have already been mentioned. Under these circumstances, the controversy within the Reform movement over the issue of matrilineal and patrilineal definitions of Jewishness, as well as the right of the Reform rabbi to officiate at a mixed-marriage cannot be discussed without some attention to their status and standing in civil litigation dealing with issues of family law.

Historically, Reform Judaism in the United States deemed divorce a civil matter and opted to discontinue the practice of requiring a Get as a prerequisite for the dissolution of a marriage. In 1929, the Executive Board of the CCAR affirmed that "a divorce is purely a legal action with which the rabbi has no connection."[29] *The Rabbi's Manual* adds: "The general principle of the Conference, although not formally adopted, can be described as follows: civil divorce is accepted as of absolute validity and rabbinic Get deemed no longer necessary. . . . In actual practice the civil law is simply accepted as final."[30] The question arises whether given the Reform position on *get* and the role of the civil courts in granting divorce, it can now challenge the legitimacy of decisions rendered by these courts. The advisability of introducing a Reform *get* and a Reform *ketubah* are matters worthy of serious evaluation if any challenge is to be made regarding judical decisions in child custody cases involving religious upbringing. Attention should also be directed to the possible modification of the language of certificates of conversion so that prospective converts to Judaism are on record as committing themselves to raising children as Jews before a formal conversion occurs. Here, too, the legality of such pledges may need to be tested in the courts.

It would appear that more thorough counseling procedures involving prospective converts to Judaism and their born Jewish spouses are very much in order as are more comprehensive periods of orientation and education antecedent to undergoing conversion or affiliating with a synagogue as a mixed-married couple. Nor is it inappropriate to caution Jewish families against the exertion of undue pressure upon the non-Jewish partner of a Jewish son or daughter to convert to Judaism before that individual is psychologically ready to do so.

The findings documented in this report may lead some to conclude that the welcome of non-Jews into Judaism and the encouragement of those who seek to link their lives and those of their children with the Jewish people, is dangerous and should be discouraged. This would be an unfortunate and unwarranted misapplication of the facts. It would mean discarding the baby with the bathwater. What is called for are the development of appropriate procedures and constructive responses to changing realities of contemporary life. Reform Judaism is eminently qualified to undertake this challenge and meet it affirmatively.

Notes

1. Egon Mayer, "A Cure For Intermarriage," *Moment Magazine*, June 1979, p. 3-4.
2. Edward W. Beal, SEPARATION, DIVORCE AND SINGLE PARENT FAMILIES, THE FAMILY LIFE CYCLE, edited by Elizabeth A. Carter and Monica McGoldrick, Gardner Press, New York, 1980, p. 241.
3. For data on the greater incidence of divorce among mixed-married couples than endogamous couples see Allen Maller, Jewish-Gentile Divorce In California, Jewish Social Studies, volume 37, no. 3-4, summer fall, 1975, pp. 280-290.
4. Steven M. Zarowny, "The Religious Upbringing of Children After Divorce," *Notre Dame Lawyer*, volume 56, no. 1, October 1980, p. 160.
5. *Ibid.*, p. 161. There are numerous cases in the legal literature dealing with the resolution of charges made by the custodial parent that the religious doctrines of the non-custodial parent are inimical to the best interests of the child, that rights of visitation should be conditioned upon the termination of religious orientation by the non-custodial parent. Since these are somewhat beyond the scope of the subject at hand they are not discussed. They are, however, worthy of examination and analysis.
6. Lee M. Friedman, "Parental Right to Control the Religious Education of A Child," *Harvard Law Review*, volume 39, 1915-16, p. 499.
7. *Ibid.*, p. 500.
8. Zarowny, *op. cit.*, p. 165.
9. *Ibid.*, p. 173.
10. Lynch v. Uhlenhopp, 78, *NW Reporter* 2d 491, Iowa, 1956, p. 492.
11. *Ibid.*
12. *Ibid.*, p. 499.
13. Lundeen v. Stremminger, 209 Va. 548, p. 551.
14. T v. H., *Atlantic Reporter*, volume 245, A 2d, 1969 p. 222.
15. Zarowny, *op. cit.*, p. 161.
16. David Miller, "Joint Custody," *Family Law Quarterly*, volume 13, no. 3, Fall 1979, p. 378.
17. Green v. Green, Brief of Plaintiff/Counter Defendant, Circuit Court for the County of Oakland, State of Michigan, October 16, 1980, p. 7.
18. Roth v. Roth, Opinion of the Court, State of Michigan, Circuit Court for the County of Oakland, p. 3.
19. Schwarzman v. Schwarzman, *Family Law Reporter*, volume 3, November 76-77, New York Supreme Court 388 NY 2d 993, p. 2127.
20. *Ibid.*
21. *Ibid.*
22. Joseph B. Glaser, "Reform Jewish View of A Court's Ruling," *New York Law Journal*, December 2, 1977, Appendix VI, p. 26.
23. *Ibid.*
24. Andrew S. Watson, "Children of Armageddon: Problems of Custody Following Divorce," *Syracuse Law Review*, volume 21, no. 1, fall, 1969, p. 55.
25. *Ibid.*, p. 62.
26. Zarowny, *op. cit.*, p. 165.
27. Steven Huberman, NEW JEWS: THE DYNAMICS OF RELIGIOUS CONVERSION, UAHC, New York, 1979, pp. 19-24. Reform practice in Canada adheres far more closely to Halachic requirements for conversion and may, therefore, affect the ruling of Canadian Courts dealing with child custody differently. The matter requires additional research.
28. Sanford Seltzer, "Membership Status of Non-Jews," *Horizon Report*, August, 1980.
29. See Responsa of the Central Conference of American Rabbis, as contained in its yearbooks, volumes I-LX, 1890-1950. Compiled by Jacob D. Schwarz, UAHC, New York, 1954, no. 78.
30. *Rabbi's Manual*, CCAR, revised, New York, 1961, p. 139.

ACKNOWLEDGEMENTS

The author is grateful to the following attorneys at law for their assistance and cooperation in the preparation of this report:

Professor Mitchell Benjoya, Boston, Massachusetts, and David Hurwitz, Harvard Law School, Cambridge, Massachusetts; Alan M. Katz, Springfield, Massachusetts; Arthur H. Rosenberg, Belmont, Massachusetts; Joel H. Schavrien, Southfield, Michigan; Henry M. Schwan, Norfolk, Virginia.

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January 21, 1982

Rabbi Sanford Seltzer
Union of American Hebrew Congregations
Central Conference of American Rabbis
1330 Beacon Street - Suite 355
Brookline, MA 02146

Dear Rabbi Seltzer:

I read the "Horizon" article and found it quite interesting. I would like to suggest an additional approach to the problem.

I am an active divorce practioner in Chicago. I would estimate that at least 50%, and probably more, of the lawyers specializing in divorce are Jewish. I would further estimate that in at least 80-90% of Jewish couples seeking divorce, one of the parties is represented by a Jewish attorney. If the parties agree as part of the separation agreement to provisions effecting the religious training of the children, the other can enforce this agreement, since in most jurisdictions it is made as part of the final judgment to the same extent as if it were terms effecting support or property.

Therefore, my suggestion is that we attempt to formulate a plan by which seminars or other forms of continuing education be offered to the Jewish lawyer to alert him to the problems which will arise after the divorce.

Based on my experience, I believe that the issue of religion as far as the parent-child relation is concerned is not because of the parent's conscience as it is a way of the custodial parent to get back at the paying noncustodial parent for whatever grievance he or she may have which are totally unrelated to the child's religious training. With this premise in mind, a specific agreement setting out the parents' obligation to the children as far as the religious training, could take this particular area out of those issues the divorced parents can use "to hurt each other".

I believe this is a new and interesting area to be explored and I would be very interested in working with you in the future.

Very truly yours,

Joanne H. Saunders

JHS/jb

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

PROBATE
NO. 120545

STEPHEN GERZOF,
Plaintiff

vs.

ROSE BRAULT,
Defendant

PLAINTIFF'S PRE-TRIAL MEMORANDUM

1. Trial counsel for Plaintiff will be:

Mitchell Benjoya
DENNER & BENJOYA
110 Union Wharf
Boston, MA 02109
(617) 227-4909

2. General Description of Claim.

Plaintiff's claim is that he should have custody of the minor child of the parties, with liberal visitation to the mother. The parties had agreed, both before the birth of their child and at the time of their separation, that the child would be raised as a Jew. Circumstances since the separation have compelled Plaintiff to the conclusion that the mother is unwilling and/or unable to carry out this agreed upon objective and that custody should therefore be with him. Further, a continuous pattern of "secular" abuse on the part of the mother should compel this court to award custody to the father.

3. Uncontroverted facts.

The following facts are not at issue: that the parties were married May 10, 1974 in Waltham, Massachusetts; that the Defendant subsequently converted to Judiasm; that their only child, David, was born February 17, 1975; that the parties subsequently separated and were divorced (Nisi Judgment on June 28, 1979); that they each signed a Separation Agreement also dated June 28, 1979; that the child is now seven and attends Cambridge Montessori School; that the Plaintiff has moved to modify the Agreement; and that pending a trial of this Complaint, the parties have agreed that each will have David for alternate weeks with the changeover on Friday after school.

4a. Controverted Facts.

All other facts are controverted.

4b. Controverted Issues of Law.

Whether the circumstances should result in a change of custody.

5. Discovery.

Neither party has deposed or requested documents from the other. Since the time this Court allowed Plaintiff's Motion to Amend his Complaint, the parties have devoted themselves to discussions with the child's attorney in an attempt to resolve this matter. It was felt that the adversarial process of discovery would impede the possibilities of conciliation. Plaintiff reserves the right to depose Defendant should a trial date be set.

NNER & BENJOYA
ATTORNEYS AT LAW
110 UNION WHARF
TON, MASSACHUSETTS 02109

6. Exhibits. (Plaintiff)

Letters between Plaintiff and Defendant.
Report of Dr. Kris (evaluation of David).
Reports of David's teachers.
Calendars maintained by Plaintiff.
Documentary evidence of Defendant's conversion to Judiasm.
Written Agreements between Plaintiff and Defendant.
Letters between Plaintiff and Rona King.
Letters between Plaintiff and Dr. Weintraub.
Children's books now in the possession of Rose Brault.
Police Reports.
Receipts.

7. Witnesses.

Julius Gerzof
Sylvia Gerzof
Rabbi Israel
Rabbi Axebrad
Rabbi Seltzer
Rabbi
Allen Rubinow
Devorah Rubinow
Christine Kris
David's teachers
Maurice Keenan
Rosetta
Stephen Gerzof
Rose Brault

8. Expert Witnesses.

The rabbis listed above are expected to testify in matters concerning their professional expertise.

9. Financial Statements.

There are no financial issues. However, Plaintiff will prepare a financial statement if directed to do so by the Court.

10. Value of Property.

Not applicable.

11. Offer of Proof pursuant to G.L. Ch. 208, §34.

Not applicable.

NNER & BENJOYA
ATTORNEYS AT LAW
110 UNION WHARF
TON, MASSACHUSETTS 02109

12. Negotiating.

Negotiation has continued between the parties, their counsel, and individuals appointed in various capacities by this Court. Since the last court appearance, more than six hours were spent by the parties and their counsel, including counsel for the minor child, in discussing settlement. These discussions did not result in settlement.

13. Estimate of Trial Time.

Seven days.

RESPECTFULLY SUBMITTED,

STEPHEN GERZOF
by his attorney,

Mitchell Benjoya
DENNER & BENJOYA
110 Union Wharf
Boston, MA 02109
(617) 227-4909

CERTIFICATE OF SERVICE

I, Mitchell Benjoya, Esquire, Attorney for Plaintiff, do hereby certify that I have served a copy of the within PLAINTIFF'S PRE-TRIAL MEMORANDUM, by delivering in hand a copy of the same, upon counsel for the Defendant, on this 10th day of May, 1982.

Mitchell Benjoya, Esquire

NNER & BENJOYA
TTORNEYS AT LAW
110 UNION WHARF
ON, MASSACHUSETTS 02109

NATIONAL CONFERENCE ON PROGRAMS FOR THE INTERMARRIED

Co-Sponsors: American Jewish Committee, Union of American Hebrew Congregations, United Synagogue of America, Federation of Reconstructionist Congregations and Havurot

May 29, 1985

Rabbi Alexander Schindler
UAHC
838 Fifth Avenue
New York, N.Y. 10021

Dear Rabbi Schindler,

We are very pleased with the results of the National Conference on Programs for the Intermarried. Much of this success is due to the enthusiasm people brought with them to this historic event. We want to thank you especially for your help in making this event a memorable one.

Thank you again for your participation. We hope to see you in 1986 in Los Angeles!

B'shalom,

Nina Mizrahi
Conference
Coordinator

NM:mf

Conference Coordinator:
Nina Mizrahi
Union of American Hebrew Congregations
838 Fifth Avenue
New York, New York 10021
(212) 249-0100, ext. 511

April 29, 1982

Rabbi Joseph B. Glaser
CCAR
21 East 40th Street
New York, NY 10016

Dear Joe:

In re your letter of April 21 I agree with your conclusion. Let's explore.

The members of the Family Committee aren't lawyers. Nor are they all knowing. Nothing should be precluded before we undertake an investigation.

All good wishes.

Sincerely,

Alexander M. Schindler

keep

This COPY

Jre —

Have your letter 3/4/21.

I agree w/ your conclusion.

Let's explore.

The members of the family

we've seen aren't lawyers. Nor are

they all knowing. Nothing should be

precluded before investigation.

Jre —

Here your letter of 4/21.

I agree with conclusion.

Let's explore.

The members of the family

with me aren't lawyers. Nor are

they all knowing. Nothing should be

precluded before investigation.

אגוד הרבנים המתקדמים
CENTRAL CONFERENCE OF AMERICAN RABBIS
21 EAST 40th STREET • NEW YORK, N.Y. 10016 • (212) 684-4990

Office of the Executive Vice President

April 21, 1982

Rabbi Alexander M. Schindler
838 Fifth Avenue
New York, NY 10021

Dear Alex,

I have received a letter from Rabbi Donald Gluckman, chairman of the Family Life Committee of the CCAR, to whom I had referred your recommendation to develop a program to support the Jewishness of the children of converts when, after a divorce, the converted partner attempts to rear the children in his or her religion of origin.

Donald writes, "it was the strong conclusion of the committee that all such legal means of coercion would be counterproductive and would feed into exceedingly complex and acrimonious family circumstances. Such involvement by our national organizations or by the Family Life Committee were considered highly inappropriate. We would hope that anything presently developing might be terminated before it goes too far."

I was not at that whole meeting and missed that discussion. I cannot elucidate any further.

My own feeling is that we ought to go ahead and at least explore all of the possibilities, keeping in mind the caveat registered by our Family Life Committee. But in the meantime, I did want you to know of this point of view. Perhaps Donald would be good enough to write to you with a copy to me explaining a little more the reasoning behind the position of the committee.

All good wishes.

Shalom,

Joseph B. Glaser

JBG/s

cc: Rabbis Donald N. Gluckman, Herman E. Schaalman

Rabbi Alexander M. Schindler

February 19, 1982

Rabbi Joseph B. Glaser

Rabbi David Saperstein; Al Vorspan

I hope you received my message in re the matter of pre and post-nuptial agreements for interfaith marriages, etc. Al and David are handling this.

This was not intended to be a standing committee. I was aiming at a one-day conference of people (jurists, etc.) expert in the field of family law who can guide us in this realm.

Be well.

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CENTRAL CONFERENCE OF AMERICAN RABBIS
21 EAST 40th STREET • NEW YORK, N.Y. 10016 • (212) 684-4990

Office of the Executive Vice President

February 2, 1982

Rabbi Alexander M. Schindler
838 Fifth Avenue
New York, New York 10021

Dear Alex,

We just had a meeting of the CCAR Committee on Church and State and I took up your proposal to establish committees of lawyers and rabbis around the country to take up the custody matter you have raised recently.

They were sympathetic to the project and will be happy to serve as well as to advise on others than themselves. When we are ready to make these appointments, then it would be a good idea if you and I got together and set the groups up.

All good wishes.

Shalom,

Joseph B. Glaser

JBG/s

cc a.j. D.S.

MEMORANDUM

Date February 4, 1982

From Sanford Seltzer

To Alexander Schindler

Copy for information of

Subject Conference For Rabbis, Attorneys and Members of the Judiciary

Alex:

I am beginning to receive an increasing number of inquiries relative to issues involving the Jewish status of children in custody cases involving mixed-marrieds and converts. I think it imperative that we convene some kind of confererence on a national level to address the problem. I think we should work with Joe in doing so. Do you want me to set it up?

Could this be a part of the legal [illegible] Institute which I suggested for the Biennial?

Rabbi Alexander M. Schindler

February 18, 1982

Albert Vorspan

Rabbi David Saperstein; Rabbi Joseph B. Glaser
Rabbi Herman E. Schaalman

This is why it is important to have that legal conference of which I spoke and to try to do something about pre-nuptial agreements,-perhaps via the Ketubah.

summer, 162 students a...

Boy Not Raised as Orthodox; Custody Lost

NEW YORK (JTA) — A Manhattan Supreme Court justice has ruled that a Jewish mother could not have continued custody of her eight-year-old son because she had violated an agreement with her former husband to bring up the child as an Orthodox Jew.

The ruling last week by Justice Irving Kirschenbaum applied a 1980 decision by an appeals court which legal experts described as the first of its kind.

Justice Kirschenbaum ruled that Rae Perlstein, 31, violated the agreement to raise Thomas Perlstein as an Orthodox Jew. The agreement specified particular schools, camps and a kosher diet for the boy. His mother was raised as a member of the Bobover Hasidic group.

Desires are the pulses of the soul.

...r Israel withdraws from the area.

According to German sources, he told Chancellor Helmut Schmidt that this step would legitimize the current Mideast peace process based on the Camp David accords, which, in Athens view, does not deserve European support.

The German officials reportedly pointed out to Papandreous that Greece has to comply with both the EEC and NATO, and cannot enjoy a "special status."

Vienna Rabbi's Home Ruined by Bomb Blast

VIENNA (JTA) — A bomb which exploded outside the home of Vienna Chief Rabbi Bela Akiba Eisenberg last week was described by police as the work of amateurs.

No one was injured in the attack on the apartment which was unoccupied at the time, but the explosion blew the door off its hinges and shattered several windows. The rabbi and his wife were on vacation out of Vienna.

Rabbi Alexander M. Schindler

November 23, 1981

Rabbi David Saperstein

Thank you so much for your comments on the divorce problems. They were very helpful and I will follow your advice.

These cases are many, not just the three you know. Just look at the figures: 35,000 inter-marriages a year, 50% divorce rate among the inter-married couples. Some of them don't have children, of course, but the problem is exceedingly wide-spread. We're talking about hundreds if not thousands throughout the land with untold anguish.

Thanks very very much for this and for all your other help.