

DISTRICT COURT, ADAMS COUNTY, STATE OF COLORADO 1100 Judicial Center Drive Brighton, Colorado 80601	
<b>In re the Marriage of:</b>  <b>Petitioner: VICTORIA LAWLER</b>  <b>Respondent: CHARLES CLEMENTS</b>	Court Use Only
Special Advocate: Kathleen A. Rimar, LPC, JD 2950 Hunt Court Erie, Colorado 80516 (303) 403-9144	<b>Case Number: 03 DR 1773</b>  <b>Division B</b>
<b>REPORT OF THE SPECIAL ADVOCATE</b>	

Kathleen A. Rimar, Special Advocate for the best interests of Mason (DOB 9/13/95), minor child of Petitioner/Mother and Respondent/Father, submits this report as ordered by the Court.

**I. ISSUES**

The parties disagree about parenting time with the minor child.

**II. INVESTIGATION**

Meetings: Meetings were held with Respondent/Father and his and Petitioner/Mother's older son Hunter at their residence on March 28, 2005; with Petitioner/Mother at her residence on March 30, 2005; and with Mason on March 30, 2005.

Telephone Contacts: Telephone interviews were held with Ms. Hernandez and Ms. Johnson, Mason's third grade teachers at Park Lane Elementary School Michael Gould, Petitioner/Mother's boyfriend; and Marilyn Murray, a friend of Petitioner. Respondent/Father did not suggest anyone that the Advocate should contact.

Review of Documents: Pleadings, Colorado Bureau of Investigation reports for both parties, and an arrest record for Hunter were reviewed.

**III. ANALYSIS** using the factors as set forth in C.R.S. § 14-10-124:

**a. The wishes of the child's parents as to parenting time.**

Petitioner/Mother said that she would like to be the primary residential parent and have decision making responsibility for Mason.

Respondent/Father stated that he would like to have Mason "equal time."

**b. The wishes of the child.**

Mason, who is ten years old, said that he likes to "live with Mom and visit Dad." Mason also said that he would like them to "be together again."

**c. The interaction and interrelationships of the child with his parents, siblings, and any other person.**

The Advocate believes that Mason is fine with both of his parents. He appears to be sad about his parents' separation and ongoing conflict.

Mason seems to enjoy his relationship with Michael Gould, Petitioner/Mother's boyfriend. He spoke of the activities he and Mr. Gould enjoy together and the things that Mr. Gould had given him. Mason showed the Advocate several letters he had written in school which referred to his positive relationship with Mr. Gould.

Respondent/Father has claimed that Mason should not be spending any time with Mr. Gould because he is a former member of the South African Defense Force (SADF), that he engaged in atrocities, and that he has terminal cancer. Mr. Gould said that he was drafted into the South African army (SADF) as was everyone at age 18 and that he never engaged in atrocities and never saw anyone else do so. He stated that he once had a tumor on his neck, but that it was removed and he does not have a terminal disease. Mr. Gould reported that he has never met Respondent and that Petitioner is a good parent who spends time with Mason and helps him with his homework. He declared that he has never seen Petitioner lose her temper with Mason.

Marilyn Murray, a friend of Petitioner/Mother, said that Respondent/Father was not responsible for taking care of Mason when he was young and that Petitioner had to pay for daycare for Mason at that time. Ms. Murray stated that Respondent was "busy on the computer or in his shop" when Mason was with him. Ms. Murray claimed that Respondent "will not exert himself to pick up Mason" for parenting time and that, if Petitioner did not do the transporting, Respondent would not see Mason much at all.

Respondent/Father has claimed that Ms. Murray uses marijuana and that she and her sons are engaged in selling drugs. Ms. Murray said that she uses medical marijuana and that there is no truth to Respondent's allegations. She reported that she adopted her granddaughter and that she was subjected to monthly home visits and fingerprinting by Denver Social Services; there were no problems with their investigation of her.

**d. The child's adjustment to his home, school, and community.**

Ms. Hernandez, who teaches Mason for half a day at Park Lane Elementary School, said that he is "on target academically" and is an average student. Her greatest concern is Mason's lack of social skills. Ms. Hernandez stated that Mason has trouble relating and engages in "odd behavior," such as making "weird noises and faces." Since Mason repeated a grade, Ms. Hernandez declared that she expected he would be more mature than he is. Ms. Hernandez reported that she has spoken with Mason and Petitioner/Mother about this, but that she has had no contact with Respondent/Father.

Ms. Johnson, who is Mason's literacy teacher, said that while he does alright with reading and writing, Mason is slow getting things done. She stated that he seems like he is sometimes "in a trance." She described that Mason will start toward getting something in the classroom and then he seems to forget what he was going to do and wanders. Ms. Johnson reported that if Mason is asked a question in front of the class, he cannot get an answer out; she referred to it as "stuttering in his mind."

Both teachers have met with Petitioner/Mother and they said that Mason is like his mother. They stated that they seem to have the same personality, demeanor, and reactions.

Petitioner/Mother lives in an apartment in which Mason has a nice room with a computer and video games. Respondent/Father lives in a house that is badly in need of repair and attention and smells strongly of cigarette smoke and cat odor. Mason has a room in the basement which the Advocate found rather dark and depressing. Respondent stated that he sometimes sleeps with Mason and said, "I find a lot of comfort in it."

**e. The mental and physical health of all individuals involved.**

The parties said that Mason experienced some deafness when he was young and that this was why he repeated a year in school. Petitioner/Mother stated that this is no longer a problem and that Mason has had speech therapy. Petitioner believes that Mason's hearing loss was a result of allergies and exposure to second hand smoke. Respondent/Father declared that they did not

know Mason was having hearing problems until he was four or five and that he "still has a legacy from this" – a speech impediment and social issues.

Respondent/Father claimed that Petitioner/Mother went into "serious depressions" when Hunter and Mason were born and that she would go into "rages" and hit him and the children. Hunter said that Petitioner is "angry and confused" and that she treated Mason well during his life, but that he "did not get the same regard."

Petitioner/Mother alleged that Respondent/Father "turned Hunter against [her]" and that Hunter became increasingly abusive to her as he grew older. Petitioner also claimed that Hunter threatened to kill himself and her on one occasion. Ms. Murray stated that her sons witnessed Hunter shove Mason down the stairs because he was angry that he had to watch him.

The Advocate has some concerns about the stability of both of these parties. Issues about Petitioner/Mother have been presented above. Respondent/Father seems to believe that everyone else is to blame for whatever problems he believes he has. When the Advocate spoke with him, Respondent talked about "ex parte hearings" taking place without his presence and those who were part of this process which he claimed is "tainted and flawed." The Advocate discovered that Respondent has filed lawsuits against a Magistrate, his former attorney, and Petitioner's attorney because of his displeasure as to what roles they have played in this case. Respondent has filed numerous motions in this case which, to a large degree, the Advocate was not able to understand and seemed to make a lot of allegations with little or no proof.

**f. The ability of the parties to encourage the sharing of love, affection, and contact between the child and the other party.**

There is a great deal of animosity between these parties and the Advocate has doubts as to whether either party is able to fully encourage a relationship between Mason and the other party. Petitioner/Mother, however, has complied with the requirements of Respondent/Father's parenting time, although Respondent has alleged that she has dropped off Mason late. Petitioner has apparently been responsible for the transportation for exchanges. Petitioner claimed that she has switched weekends with Respondent when he has asked and that she has told Respondent that he can have more time with Mason as long as he lets her know in advance.

Hunter's level of anger and dislike for Petitioner/Mother struck the Advocate as being extreme. Respondent/Father and Hunter both spoke negatively about Petitioner in each other's presence and it appeared that Respondent did nothing to modify his comments or remind Hunter that he was

speaking about his mother. The Advocate had the impression that Petitioner was often a topic of conversation between them. One has to wonder what is said about Petitioner/Mother when Mason is present.

**g. Whether the past pattern of involvement of the parties with the child reflects a system of values, time commitment, and mutual support.**

Respondent/Father said that he was the primary caregiver for Mason when the parties lived together since he worked out of the home. Petitioner/Mother stated that Respondent was at home with the boys since she had to work "crazy schedules" in order to support the family.

Petitioner declared that she wants to "raise Mason to be a decent man." She claimed that Hunter, who lives with Respondent/Father, "sits around all day and plays video games" and that he has been in trouble with the law. The Advocate reviewed a report which indicated that Hunter was arrested in 1997 for injury to property, in 2002 for trespass, in 2003 for unlawful possession of drug paraphernalia, in 2003 for resisting arrest and trespassing on school property.

The Advocate does not believe that it is possible for these parties to engage in joint decision making and that it would not be in Mason's best interests for them to do so.

**h. The physical proximity of the parties to each other as it relates to the practical considerations of parenting time.**

Distance is not an issue in this case since the parties live in metro Denver.

**i. Whether one of the parties has been a perpetrator of child abuse or neglect.**

There have been accusations of child abuse and neglect and Social Services quite recently did a brief investigation of both parties and determined that neither party was a danger to the child.

**j. Whether one of the parties has been a perpetrator of spouse abuse.**

While there have been accusations of domestic violence, neither party was arrested for this.

Petitioner/Mother claimed that the police had to be called in 2003 when Hunter was "shoving her around" and telling her to leave the house. She said that Hunter locked her out of the house and that when Respondent/Father arrived he asked her what kind of a mother she was if she could call the police on

her son. Petitioner stated that this comment was made in front of the boys. At this time, Mason was asked which parent he wanted to go with and he replied that he wanted to leave with Petitioner/Mother.

**k. The ability of the parties to place the needs of the child ahead of his or her own needs.**

To some degree, both of these parties have shown an inability to put Mason's needs ahead of their own because they have continued their level of conflict and have put Mason in the middle of it. The Advocate believes that Petitioner/Mother may have shown a preference for Mason over Hunter and that she probably has lost her temper and may even have hit her children. Petitioner has, no doubt, made some poor choices as a parent, but the Advocate believes she can offer the better opportunity of safety and stability for Mason.

The Advocate is concerned about Respondent/Father's capacity to put Mason's needs first. Respondent had absolutely nothing good to say about Petitioner and the Advocate does not have much faith that he would encourage Mason's relationship with Petitioner if he were to be the primary residential parent. Respondent has also made a number of wild allegations about Petitioner, Mr. Gould, and Ms. Murray that do not appear to have any basis in reality. Respondent does not seem to have the capacity to financially support Mason and there is also the question of where Respondent will be living once the marital residence is sold.

#### **IV. RECOMMENDATIONS**

For the reasons above, the Special Advocate believes that it is in the best interests of the minor children that the following recommendations be implemented:

1. That Petitioner/Mother be the primary residential parent and have ~~decision-making responsibility for the minor child.~~

Day-to-day decisions with respect to the child shall be made by the parent with whom the child is staying, without the need to contact and discuss the decision with the other parent. Day-to-day decisions include, but are not limited to, minor disciplinary actions; ordinary and minor medical and dental care; house rules such as chores, allowance and the like; and social dress and hygiene guidelines. The parties shall discuss with each other any problems or guidelines regarding day-to-day decisions which will help them provide consistency for the child when he is staying at their residences.

2. That Respondent/Father's parenting time consist of every other weekend from Friday after school until Sunday at 7:00 p.m. Respondent shall be responsible for picking up Mason at the beginning of his parenting time.

3. That the following holiday and summer schedule be implemented:

In even numbered years Petitioner/Mother would have New Years Day, Memorial Day, Halloween, and Thanksgiving Day. Respondent/Father would have these holidays in odd numbered years.

In even numbered years Respondent would have Easter Sunday, Fourth of July, Labor Day, and Christmas Day. Petitioner would have these holidays in odd numbered years.

Each party shall have one week of uninterrupted parenting time in the summer provided that the party informs the other party of the dates he or she would like by May 1.

These holidays would begin at 9:00 a.m. (or after school) and end at 7:00 p.m. if they are not already part of a party's parenting time.

4. That both parties attend a substantive parenting course of at least eight sessions.

5. That neither party say anything negative about the other in the presence or within the hearing of the minor child.

DATE: April 16, 2005

Respectfully Submitted,

  
Kathleen A. Rimar, LPC, JD

#### CERTIFICATION OF SERVICE

I certify that on April 16, 2005 a copy of the foregoing was placed in the US Mail and addressed to the following:

Katherine Grier, 2701 Alcott St., Ste. 482, Denver, CO 80211  
Charles Clements, 1741 Dallas St., Aurora, CO 80010

