



SUPERIOR COURT OF SAN DIEGO
FAMILY COURT SERVICES

November 14, 2008

OFF CALENDAR

DATE OF HEARING: December 16, 2008

F I L E D
Clerk of the Superior Court

NOV 17 2008

By: L. BRINK, Deputy

TO: Department F1

D472021

FROM: Lynn Waldman, LCSW, Counselor
Family Court Services

RE: Parenting Plan

OF: Oliver Joseph Lally-Roepke, DOB: 6/30/95 (Age 13)

Mother: Michele Lally

Father: Clifford L. Roepke

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On November 10, 2008, Michele Lally and Clifford L. Roepke, parents of the above-named minor child participated in a pre-OSC mediation conference in this office. The parents were seen in separate interviews as the mother is alleging domestic violence by the father.

The parents were unable to reach an agreement regarding a sharing plan for their child. However, the father agreed to participate in a high conflict parenting class.

This is the parents' second medication session at Family Court Services. They were last seen on November 14, 2002, when a recommendation was made for the parents to share joint legal custody, for the mother to provide the primary residence and for the father to care for the child during weekends. The Court is respectfully referred to the prior FCS memo regarding this case.

The parents indicated they have been caring for the child during alternating weeks with exchanges on Friday after school, for the past year.

The mother is the moving party in this matter. She is requesting sole legal and physical custody of the child and would like the father to care for the child during the third weekend of each month, from Friday until Sunday.

The father is requesting sole legal and physical custody of the child and would like the mother to care for the child one weekend each month, from Wednesday after school until Monday to school.

The mother lives in a three-bedroom townhouse with the child at issue in San Diego County. She works a varied schedule as an artist and in real estate.

The father lives in a two-bedroom condominium with the child at issue in San Diego. He is self-employed in the field of audio/video.

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#1
The mother alleged there has been a history of domestic violence between her and the father throughout their relationship. The mother said she had a temporary restraining order against the father in April, 2007. The mother said she obtained the TRO because the father is physical. The mother said she could not remember the incident but then stated he slugged her in the chest, injuring her and causing bruises. The mother said she did not press charges because her attorney told her it was too expensive

and she did not want to make waves. The mother said she has police reports and will fax them to the undersigned. The mother said she would like the undersigned to interview the child.

Lie # 2
The mother said she left the father when the child was 1 1/2 years old because he threw her into the wall. The mother said the father had been drinking two coffee cups with vodka. When she asked him to stop drinking he became angry with her. The mother said she did not report this incident to the police.

The mother also alleged someone tried to break into her house last week and she believes it may have been the father.

The mother said the child is not doing well in school and there have been three incidents last month which warrant a change in the parenting plan.

Lie # 4
In October 2008, the child had a scuffle in the house with the father. The mother went to the father's house to retrieve the child and saw him running down the street barefoot calling 911 on his cell phone. The mother said she called the police and they instructed her to take the child home and not return him to the father's home. The mother said she took the child to the family Justice Center. She thinks they may be filing a restraining order on her behalf but is not sure.

On November 7, 2008 the child went to the principal's office saying he refused to go to the father's home.

Lie # 5
On November 11, 2008, the mother alleged the father threw the child on the sofa and into the wall after the father had been drinking. The child called the mother saying he wants to run away from home.

Lie # 6
The father said the mother and the child made false accusations against him. The father said he never slugged the mother in the chest and her restraining order was thrown out by the court because it was a lie. The father denied drinking vodka from coffee cups or throwing the mother against the wall. The father said he lived in Sun Valley when the child was 1 1/2 years old and not with the mother. The father denied trying to break into the mother's home last week.

The father said the child is doing well in school and he is making "B's" and "C's." The father said the mother instigates conflict and controversy with the child. In October, 2008 the father said

he was upstairs folding laundry when the child requested to go to the mother's house. The father spoke to the mother on the phone and told her it did not make sense because he would be transporting the child to school the next morning. The mother became argumentative and hung up on the father. The father then heard the child leave the home and followed him outside. He saw the child getting into the mother's car and he approached the car to speak with her. The mother left with the child against the father's wishes. The father returned home and sometime later was contacted by a San Diego Sheriff's officer. The officer advised the father to let things calm down. The following day the mother took the child to court causing him to miss a day of school.

The next time the father's parenting time was to occur, the mother took the child out of school at 11 a.m. and kept him the whole week.

On November 9, 2008 the father said the child resisted coming up stairs with him and having a rational discussion. The father said he brought him upstairs and then the child understood who was stronger. The father said he pushed the child up the stairs by grabbing him in a bear hug.

The father is concerned the mother is creating chaos and causing a rift between him and the child. He said she is making false allegations. The mother shows up at school unannounced and interferes with exchanges. The mother stands in front of the child and coaxes him to be defiant.

The mother refuses to go to counseling with the child. The child has been in counseling since December 2007 with Dr. Chris Miller.

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The undersigned was unable to obtain the mother's responses to the father's concerns because she left the FCS office during the father's interview.

COLLATERAL CONTACTS:

On November 10, 2008 the undersigned spoke with **Child Protective Services** and was informed the family has four closed referrals:

On 11/10/08 a referral was received alleging physical abuse by the father to the child. This referral was evaluated out.

On 10/3/08 through 11/6/08 a referral was investigated alleging physical abuse by the father to the child. This referral was unfounded.

On 12/14/06 through 3/8/07 a referral was investigated alleging emotional abuse by the father to child. This referral was unfounded.

On 11/29/06 a referral was received alleging emotional abuse to the child by the father. This referral was evaluated out.

On November 10, 2008, the undersigned spoke with the **CPS worker** who investigated the referral dated 10/3/08. The CPS worker stated there seems to be a power struggle between the parents and the mother has concerns for the child's safety at the father's home. The child seems to be parroting what he hears from the mother and the CPS worker said he thinks both parents are appropriate.

The CPS worker said the child took off and called the police because he was not getting his way and his mother encouraged him. The CPS worker said the parents present as similar and one does not seem better than the other.

On November 10, 2008, the undersigned spoke with **Patricia Lowell, the Principle at Stella Maris Academy** where the child attends 8th grade.

Ms. Lowell said the child is doing quite nicely in school, he is in the high average range for his grades and his behavior is excellent. Ms. Lowell said she has known the child since kindergarten and he is a nice young man.

*supposed
Lowell*
Ms. Lowell said the parents have dealt with the issue of custody over the years. The father has taken a more responsible role and the mother seems to be more anxious. Ms. Lowell has spoken with Dr. Miller, the psychologist for the family and he said it is difficult talking with the mother if things are not going her way, and this seems to take a toll on the child.

A few weeks ago it was the father's week and Oliver came to her office saying he was afraid the father would kidnap him. Ms. Lowell believes this was brought about by the mother being anxious. She said a similar incident occurred two years ago around the holidays when it was the father's turn to have the

child during Christmas. The child wrote a note to his teacher saying he was afraid to go with his father.

Ms. Lowell said the mother tries to portray the father in a negative light. The child wants to support and please the mother but he also seems very happy when he is with the father.

The father signed a release of information for the undersigned to speak with Dr. Chris Walker. ^{Miller} The mother left the FCS office before the undersigned was able to request her signature on the release of information.

INTERVIEW WITH THE CHILD:

On November 10, 2008, the undersigned interviewed the child, **Oliver, age 13**. Information obtained from that interview was taken into consideration when developing the recommendations.

Oliver presented as a pleasant and engaging young man. He said he does not know why he is present for today's interview but thinks it has something to do with his parents.

Oliver described having a difficult relationship with his father for as long as he can remember. A few weeks ago he wanted to go to a friend's house but his father wanted him to stay home. Oliver said his father became angry and came at him from upstairs. He tried to get away but fell and his father hit his arm. Oliver does not know if his father hit his arm in the commotion or if it was intentional. Oliver said he has a cut on his lower chest after falling on the tile floor. He said his father then picked him up and threw him onto the couch. His father was yelling and screaming. Oliver said he was scared and shocked. He was able to leave home and went to Ralph's where he called the police. Oliver said the police came and then returned him to his father's home.

Several weeks ago, Oliver said he wanted to spend one night in his mother's home because he had mass the next day and it would have been more convenient for him. Oliver said his father did not approve of him going to his mother's home and he grabbed him by the shoulder several times. Oliver said his father started chasing him and he called the police. Oliver was able to go to his mother's home, but he said he was petrified to go to school the next day. He feared his father would come and take him away. Oliver said his father has never threatened to take him away, however.

Oliver said his relationship with his mother is much more positive for him. He feels at home with his mother, his dog is there and he has access to other family members such as his grandmother and cousins.

REVIEW OF DOCUMENTATION:

On November 14, 2008, the undersigned reviewed volume two and three of the Court file.

REASONS FOR RECOMMENDATION:

It appears as though the Court ordered the parents to share custody of the child on an alternating weekly basis with exchanges every Friday at school, beginning on September 21, 2007 and this is the schedule they have been following.

At this time, there does not appear to be a basis for a change in the parenting plan. The mother alleged the father is abusive to the child and that the child is doing poorly in school. However, all allegations of abuse to Child Protective Services have either been unfounded, indicating abuse has not occurred or evaluated out and not investigated. According to the Ms. Lowell, the school Principle at Stella Maris Academy, the child is doing well in school and is in the high average range for his grades, and she indicated his behavior is excellent.

Support Lowell
The CPS worker believes there is a power struggle between the parents, the child is parroting what he hears from the mother and when he does not get his way, he calls the police. The CPS worker believes the child is influenced by the mother. Ms. Lowell seems to have similar sentiments and indicated the mother is negatively influencing the child out of her anxiety. It has been Ms. Lowell's observation that the child enjoys spending time with each of his parents.

The child indicated his preference for spending more time with his mother and said his father has been physically aggressive toward him. The father said he coaxed the child up the stairs in a bear hug because he wanted to have a reasonable discussion with the child. The undersigned finds the father's method of coaxing the child up the stairs to be inappropriate and will not enhance his relationship with the child. This counselor is recommending the father participate in a parenting class focusing on raising teenagers to gain a better understanding of more appropriate parenting techniques.

This counselor has considered the child's wishes to spend more time with the mother, but believes the child will fare better if he continues to be cared for by both parents. The undersigned is recommending the child continue in counseling and that the parents participate in counseling at the discretion of the therapist. The parents have a highly contentious relationship in which the child has been involved and it seems as though he has been negatively impacted. This counselor would like to remind the parents of the need to share the child willingly and should that not occur, the primary parent in the future may be the parent who is more willing to share the child.

The father has agreed to participate in a co-parenting class and the undersigned is recommending the parents participate in the Kids Turn/Parents Turn program. This program may be helpful as it allows the parents to hear the child and it offers insight into how the child is impacted by the parents' inability to communicate civilly.

The undersigned is recommending an alternating holidays schedule and a seven day vacation schedule. A recommendation is also being made for one phone call each day by the non-custodial parent to the child to last for up to five minutes. This way, the child will not be distracted by phone calls from the other parent and will be able to enjoy time with each parent.

Therefore, in light of the aforementioned information, the following reflects the recommendations warranted for the family at this time, submitted to the Court for consideration.

RECOMMENDATION:

1. The parents shall share joint legal custody, which means that both parents share the right and responsibility to make decisions relating to the health, education, and welfare of their child.
2. Each parent shall have access to medical and school records pertaining to the child and may consult with any professionals involved with the child. It is each parent's responsibility to request school calendars, progress reports, report cards and parent-teacher conferences directly from the school.
3. Each parent may obtain emergency health care for the child without the consent of the other parent. Each parent is to notify the other parent as soon as reasonably possible of any illness requiring medical attention or any emergency involving the child.
4. The parents shall share joint physical custody of the child in the following manner:
 - a. The parents shall care for the child during alternating weeks, with exchanges each Friday at school or at 8:00 am.
5. The child shall participate in counseling with a licensed mental health practitioner or agency. The parents shall cooperate and participate in the child's therapy at the discretion of the therapist. Issues to be addressed include: impact of parental conflict. Possible resources include: William Dess, Ph.D., 619-295-6648, Penny Angel-Levy, 858-792-9922 or Robin Tarbox- Roland, MFT, 619-709-7208.
6. The father shall enroll in and successfully complete a parenting course of at least six weeks duration and provide verification of completion of the program to the Court. The course shall be completed by February 1, 2009. A list of courses may be obtained from Family Court Services.
7. Holiday schedules shall take precedence over the regular parenting schedule, which shall resume after the holiday is over. In absence of other agreement by the parents, specific holiday schedules shall be as follows:

- a. Christmas: The child shall be with the father in odd-numbered years and with the mother in even-numbered years, from December 24 at 10:00 AM until December 26 at 10:00 AM.
- b. New Year's Day: The child shall be with the mother in even-numbered years and with the father in odd-numbered years, from January 1 at 10:00 AM until January 2 at 10:00 AM.
- c. Easter: The child shall be with the father in odd-numbered years and with the mother in even-numbered years, from 10:00 AM until 7:00 PM.
- d. Mother's Day/Father's Day: The child shall be in the care of the parent being honored by the holiday, from 10:00 AM until 7:00 PM
- e. Fourth of July: The child shall be with the mother in odd-numbered years and with the father in even-numbered years, from 5:00 PM on July 3 until 12:00 PM on July 5.
- f. Halloween: The child shall be with the father in odd-numbered years and with the mother in even-numbered years, from after school until return to school the next morning, if a school day, and if a weekend day, from 10:00 AM until 7:00 PM.
- g. Thanksgiving: The child shall be with the mother in odd-numbered years and with the father in even-numbered years, from 4:00 PM the Wednesday before Thanksgiving until 7:00 PM the Sunday after Thanksgiving.
- h. Child's Birthdays: The child shall be with the father in odd-numbered years and with the mother in even-numbered years, from after school until return to school the next morning, if a school day, and if a weekend day, from 10:00 AM until 7:00 PM.
- i. Parents' Birthdays: The child shall be in the care of the parent being honored by the holiday, from after school until return to school the next morning, if a school day, and if a weekend day, from 10:00 AM until 7:00 PM.

8. Either parent may vacation with the child each year of up to seven days. They shall notify the other parent in writing of their vacation plans a minimum of 30 days prior to departure and provide the other parent with a basic itinerary to include dates of departure and return, destinations, flight information and telephone numbers for emergency purposes. The vacationing parent shall not schedule the vacation during the other parent's scheduled holiday time with the child, unless agreed upon in advance by both parents. The vacation shall not interrupt school attendance unless mutually agreed upon by the parents and school personnel.
9. There shall be scheduled telephone contact between the child and parents as follows: the non-custodial parent shall call the child at 7:00 pm for up to five minutes.
10. Neither parent shall make negative statements about the other parent in the presence or hearing of the child or question the child about the other parent. The parents shall communicate directly with each other in matters concerning the child and shall not use the child as messenger between them. The child shall not be exposed to court papers or disputes between the parents, and each parent shall make every possible effort to ensure that other people comply with this order.
11. Each parent shall always keep the other informed of his/her address and telephone numbers and shall notify the other parent within 24 hours of any changes.

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12. Neither parent shall move the residence of the child out of San Diego County without giving the other parent a 45-day advance written notice and obtaining the other parent's written permission prior to the move or an order of the Court granting the move.

Respectfully submitted,



Lynn Waldman, LCSW
Counselor
619-450-7818

LDW

Cc: Michele Lally, In Pro Per
Clifford L. Roepke, father
Jac F. Pouliot, Esquire

Case Name Roepke
Domestic No. D472021

CHILD SHARING PERCENTAGE

MOTHER: 50 %

FATHER: 50 %

COMMENTS: