

EXAM # _____

**CHILDREN AND THE LAW
FINAL EXAMINATION**

Professor Pilkington-Casey

Fall 2008

INSTRUCTIONS:

This is an open book exam. You may use your text, notes, and additional cases I required you to read for class, any other books or written materials of your choice but no computers. You have three hours to complete it. The questions should be answered with references to common principles of laws involving children, including cases in your text and/or those assigned in addition to the text that apply to the issue(s), as well as generally adopted uniform statutes in your text if assigned as reading during the semester unless a question specifically sets out the law to apply.

Write all answers in the blue book(s). Write legibly. If you do not write legibly, you will lose points. Make sure your exam number is on all blue book(s). You will lose points for sentences or paragraphs that run on.

Write only on the right hand side of the page.

ESSAY QUESTIONS

Thoroughly answer each question asked. However, please note that I subtract points for wrong answers or information or analysis not directed to the question asked.

QUESTION 1 (106 POINTS)

You are the Guardian ad Litem making a recommendation at the request of the court regarding joint custody of the child.

FACTS

While conducting your Guardian ad Litem investigation you have learned the following:

Justin B. Curtis and Trisha A. Curtis were married in March 2007. At the time of their marriage, Trisha was in a custody dispute concerning her older son from a previous marriage.

Justin and Trisha's son, Joseph Curtis, was born 3 months prematurely in February 2007 and suffered from respiratory problems. Trisha was unemployed at the time of Joseph's birth and did not begin working again until Joseph was 8 months old. Trisha states that she was Joseph's primary caregiver during this time.

Justin's job as a locomotive engineer on runs from North Platte, Nebraska, to Marysville, Kansas, requires him to be absent approximately six times each month for approximately 36 hours per trip.

The parties separated in September 2007, shortly after Trisha returned to work. By that time, Trisha had obtained sole custody of her older son, who is 3 years older than Joseph. For a while, Justin and Trisha informally agreed to share custody of Joseph and, according to Trisha, they had approximately equal custody time. When Justin was gone for his job, Trisha had custody and took Joseph to daycare while she was working. Justin had custody when he was at home.

In November 2007, Justin filed a complaint for dissolution, seeking permanent custody and control of Joseph. Trisha filed an answer and a counterclaim for dissolution, also seeking sole custody. Neither party requested joint custody. In December 2007, the court granted Trisha's ex parte request for temporary custody. The reason for the ex parte order was Trisha's concern that Justin, after filing for dissolution and permanent custody, was not returning Joseph to her at the end of his custodial time. Trisha continued to allow Justin to have custody while she was at work when he was in town.

After a hearing in March 2008, however, the court awarded temporary custody to Justin. The court did not give specific reasons in its order for the change. As part of the order the judge appointed you to be Guardian ad Litem for Joseph.

Trisha was granted visitation on Tuesday nights and every other weekend. After Justin was awarded temporary custody, one or both of Justin's parents, who lived 12 to 15 miles away, would come to stay with Joseph when Justin was called in to work so that Joseph's schedule would not be disrupted and Joseph would not have to be moved. Justin normally had 1 1/2 hours' notice in which to report to work. Justin and Trisha live 5 miles away from each other.

You are concerned about Justin having so many of his relatives care for Joseph while he is absent for work, rather than allowing Joseph to spend more time with Trisha. But you have also observed that with the assistance of his family, Justin has been able to provide stability and a close family setting in his own residence. You believe that joint custody might be a way for both parents to maintain an equal and substantive role in caring for Joseph. However, you also believe that joint custody would be the most beneficial to Joseph if his parents cooperated better.

Justin has now been Joseph's primary custodian for close to 10 months, and Joseph is 22 months old. Justin states that he and Trisha do not get along or communicate well, and he admits that he has not advised Trisha of Joseph's medical appointments. But he maintains that he has cooperated with Trisha on visitation and has informed her of Joseph's medical needs for visitation purposes.

Justin also states that he has worked about six trips per month to Kansas during the past 8 months. He points out that he is usually able to make some of his trips coincide with Trisha's weekend visitation and overnight visitation during the week so that he has 4 to 6 days at a time to be at home with Joseph. Justin states that if his parents should become unavailable, he will find another job within the railroad. He admits that he thinks it is more appropriate for his parents to be raising Joseph than for Trisha to do so. Both of Justin's parents have told you that Justin is a good father.

Trisha informed you that she has started a new job as a clerk for the sheriff's office, working 9 a.m. to 5 p.m., Monday through Friday. Dr. Lisa Jones, a psychologist hired by Trisha to evaluate Trisha's relationship with her children, as well as her parenting skills, spoke with you about her assessment and observations. Jones stated that she had observed Trisha with her sons for approximately 1 1/2 hours in her office and during a sporting event when Trisha did not know she was being observed.

Jones had also reviewed or conducted additional testing. Jones opined that Trisha is a high-functioning parent who interacts affectionately and positively with her children and sets appropriate limits. Jones also concluded that Joseph was bonded to his older half brother. Trisha's friend, brother, and mother have told you that Trisha is close to her sons, parents appropriately, and that her sons are bonded.

Trisha states that Justin had not been actively involved in Joseph's care during the first 8 months of Joseph's life. Trisha relates that after they separated, she and Justin had equal

custody time until Justin began “laying off” of work and keeping Joseph for several days at a time, prompting Trisha to seek a custody order. Trisha informed you that when she had temporary custody, she continued to allow Justin to have about the same custody arrangement; but after Justin obtained temporary custody, he did not reciprocate and refused to talk to her about additional visitation time.

Trisha states that Justin does not keep her informed of Joseph's medical appointments or details of his upbringing, including daycare arrangements. Trisha does not believe Justin would work to maintain her relationship with Joseph if he were granted sole custody. Trisha states that if she were granted custody, she would continue to give Justin custody while she was working if he was in town and also that she would cooperate on a joint custody schedule if definite custody times were outlined.

You are concerned that both parties are manipulative and do not get along except that they recognize the other as a fit parent and seek the best interests of Joseph.

You requested each parent to explain to you how they would arrange a joint custody schedule for Joseph with the other parent. Justin's proposal offered to expand Trisha's every-other-weekend visitation to Monday morning and to give Trisha an opportunity to pick up Joseph when Justin was called in to work. Trisha proposed that the parties each have custody for 2 week-days and alternate Wednesdays and weekends on a weekly basis.

QUESTION 1 (106 POINTS)

As Guardian ad Litem would you recommend joint custody of Joseph for Trisha and Justin? Please explain your answer and the criteria you would use to reach your decision.

QUESTION 2 (87 POINTS)

You have been retained by Jeffrey Nooks parents to represent Jeff in this delinquency case. Jeffrey's parents want to know whether his name will be entered onto the sex offender's registry because of his actions.

FACTS

On November 25, 2008, Nooks and the victim in this case, who were sixteen and fourteen years old respectively, were in a stairwell between classes at Wilbur Wright High School. Classes ended at approximately 10:23 a.m. The victim testified that, following her class, she had proceeded to a stairwell located near the classroom, which she customarily takes to her next class. Upon reaching the stairwell, she stopped to tuck in her shirt and asked Nooks who, was also between classes, to hold her books while she did so. She then began walking up the stairs to her next class.

As the victim was climbing the stairs, Nooks stepped in front of her and asked her to kiss him. When she refused and attempted to continue up the stairs, he trapped her against the stair rail by putting one arm on either side of her and attempted to kiss her. The victim resisted by moving her face away and told Nooks to "get away" and to "stop playing." At this time, the two were seen by another student, who testified that he had seen Nooks with the victim trapped on the stairs and had heard her say, "Stop. Leave me alone."

The victim then attempted to get away, moving down the steps and pushing Nooks' arm away from the rail. She almost tripped and dropped her books, and Nooks helped her up while she picked up her books. As he was helping her up, Nooks pushed the victim under the stairs and shoved her against the wall. The victim testified that she had told him to "stop playing games." Without repeating all of the details, Nooks then attempted to put his hand into her pants, but she crouched forward to prevent him from doing so. At one point, Nooks succeeded in getting his hand into her pants and put his fingers inside her vagina. The victim yelled for Nooks to stop, scratched and pinched his arm, and tried to pull his hand out. Although she thought that a teacher in a nearby class might hear her screaming, no one came out into the hallway to help her.

Nooks eventually removed his hand from the victim's pants. He attempted to put his hand inside her pants again, but she tried to get away and he was unable to do so. Nooks again attempted to put his hand in the victim's pants. Nooks then suddenly let her go and apologized. She knocked on the door of a nearby classroom but received no answer. She then told Nooks that she was going to report the incident, to which he replied that he knew people who could hurt or kill her. She replied that she knew people as well.

The victim then ran up the stairs to a bathroom where she quickly repaired her disheveled appearance before going to her next class. Once at the class, for which she was ten to fifteen minutes late, she asked another student to get the teacher, Ms. Steele, while she waited outside. Ms. Steele testified that the victim had looked sad and that she had begun to cry as she had related the incident. She further testified that it had been unusual behavior for the victim to stand outside the doorway to the classroom rather than come in and sit down. The victim told Ms. Steele that Nooks had put his hand into her pants. Ms. Steele then called the school nurse, Ms. Senne, and they agreed that the victim should go to the school's clinic.

When she arrived at the clinic, the victim spoke to Ms. Senne about the incident. Ms. Senne noted that the victim had a "blank look" on her face, seemed depressed and sick looking, that she had started to cry and had become visibly upset as she had related the incident to Ms. Senne. The victim was reluctant to talk, so Ms. Senne questioned her regarding what had happened. The victim related the above facts to Ms. Senne, also stating that Nooks had put his hands under her shirt. Ms. Senne took the victim to a conference room and then stayed with her until her mother arrived.

After leaving the victim with Ms. Senne, Ms. Steele informed a school security guard, James Runyon, of the incident. Mr. Runyon went to the clinic but left when the victim was reluctant to speak in front of him. He then informed the principal, Ms. Frederick, of the incident. When they learned that the alleged assailant was Nooks, both Mr. Runyon and Ms. Frederick began searching for Nooks but could not find him. At approximately 11:20 a.m., Mr. Runyon was radioed that Nooks had arrived at the school's office. At that time, he asked the school dispatcher to call the police. Officer Jeffrey Lour responded to the call.

Officer Lour spoke to both Nooks and the victim. Nooks admitted that he had kissed the victim but denied trapping her and putting his hands into her pants. Officer Lour decided to arrest Nooks. Nooks was originally charged with gross sexual imposition; however, the charge was amended to rape. After Nooks was arrested, two other students came forward and reported similar incidents with Nooks.

Nooks was referred to Dr. Kevin Breen for an evaluation. Dr. Breen, a psychiatrist, evaluated Nooks and also met with his parents one time on December 5, 2008, to determine whether Nooks was a danger to anyone else. Dr. Breen's report of this examination will be entered into evidence. The report indicates that Nooks admitted to four episodes where he tried to force younger girls in the school to kiss him and that he would try to put his hand in their pants. Nooks did threaten the girls not to tell anyone or he would have them hurt. Nooks denied that the girls were physically coerced but admitted he used verbal coercion. Nooks's parents revealed to Dr. Breen that Nooks also had exposed himself on one occasion to a ten-year-old girl. Nooks denied having been physically, sexually, or emotionally abused but admitted that he had seen his father's sexually explicit magazines.

Dr. Breen concluded in his report that Nooks is minimizing his sexual encounters.

The court will refer to the following statutes:

“ ‘Juvenile sex offender’ means any person who is adjudicated a juvenile delinquent as the result of the commission of or attempt to commit a violation set forth in item (B), (C), or (C-5) of this Section or a violation of any substantially similar federal, sister state, or foreign country law. For purposes of this Section, ‘convicted’ shall have the same meaning as ‘adjudicated.’ ” 730 STATE 150/2.

If the allegation is found to be true, Nooks will fall within the definition of a juvenile sex offender because he will have been adjudicated delinquent as the result of the commission of a violation of item (B) of § 2, namely, aggravated criminal sexual assault. See 730 STATE150/2(B)(1).

Section 3 of the Registration Act provides that sex offenders and sexual predators have a duty to register as required by the Department of State Police. 730 STATE 150/3 With regard to the duration of registration, § 7 of the Registration Act provides, in pertinent part:

“A sexually violent person or sexual predator shall register for the period of his or her natural life after conviction or adjudication if not confined to a penal institution, hospital, or other institution or facility, and if confined, for the period of his or her natural life after parole, discharge, or release from any such facility. Any other person who is required to register under this Article shall be required to register for a period of 10 years after conviction or adjudication * * *.” 730 STATE 150/7.

QUESTION 2 (87 POINTS)

As Jeffrey Nooks’ counsel how would you advise Jeffrey and his parents regarding the sex offender’s registry list? Please explain your answer regarding why Jeffrey’s name would or would not be entered.

QUESTION 3 (87 POINTS)

You are the attorney for the grandparents who want advice regarding whether they will be granted visitation with their grandchild.

FACTS

On December 28, 2006, Alexander Lyle Dawson was born to Julia Dawson and Timothy Dawson. Julia was acknowledged to be missing on September 12, 2008. On October 3, 2008, approximately 20 months later, Julia was found dead, very likely the result of murder.

After Julia's death, and after Timothy Dawson refused to allow them to visit with Alex, Kevin and Tamara Keenan are seeking grandparenting time with Alex through the court system.

Julia and Dawson had each been previously married. Julia has one prior child, Sean (age 5), while Dawson has two children from his prior marriage.

Julia had a good relationship with her parents until 2003 when she “met” Dawson on the Internet and quickly moved in with him. Thereafter, and continuing until a few months before Julia disappeared in September 2008, Julia and her mother had a very strained relationship. Things became so bad that at one point Julia sought, but was denied, a personal protection order against her mother. There were also bad feelings between Dawson and Tamara Keenan, with threats being made by Dawson to Tamara and with Tamara testifying against Dawson in a child custody case between Dawson and his ex-wife. Because of this strained relationship, Tamara had only seen Alex on four occasions during his first 20 months of life.

The Keenans suspect that Dawson murdered Julia, but no charges related to her murder have been filed. You have also received tangential information that Mr. Dawson is a suspect in her alleged murder.

The first time Tamara had contact with Julia after Alex was born was in the spring of 2007, when Julia called and asked if she could move back home. According to Tamara, Dawson told Julia that “she could never leave with [Alex].” Julia discussed divorcing Dawson in the fall of 2007 but decided to wait until after the holidays to file for divorce. Julia then told Tamara that she was going to wait until after she got her income tax refund in February 2008, so that she could use the money to file for divorce. Tamara told you that Julia hired an attorney, put the retainer on her credit card, and had the receipt mailed to the Keenans' address. Tamara also stated that by the summer of 2008, Julia “very much wanted to leave Tim but did not have a certain time that she wanted to, but still did.” By that time, Julia “did not care if she got in trouble.”

With regard to Sean, Julia's other son, Paul Terrell (Sean's father and Julia's ex-husband) told you that the Keenans had been Sean's primary caregivers since Julia's disappearance.

The Keenans also paid Sean's preschool tuition. Paul has informed you that Julia became upset when she learned that, contrary to her wishes, Paul had facilitated a relationship between their son, Sean, and her parents. Paul also informed you that that once Julia married Dawson, her relationships with others became strained.

During the 2003-2008 period, Julia had a much better, and closer, relationship with her father. Kevin stated that after Alex was born, Julia would bring Alex with her when they met for lunch. According to Kevin, he spent a good number of hours with Alex during these lunches, as well as at other times when he met Julia and Alex. Kevin believed it was important for him to continue his relationship with Alex, because Alex "is going to want to know about his mother. There's just no doubt about it. He's going to start asking all kinds of questions.... He's going to go to school, Mother's Day is going to come up and he's going to want to know why.... So nobody knows our daughter better than us, and a good way to tell Alex about Julia would be to allow grandparenting time." In Kevin's opinion, "all kids need their grandparents, even if for a little bit of time."

Julia Schaefer-Space, a clinical psychologist who will be offered as a witness by the Keenans, will testify that the Keenans are a positive influence, and "[i]t would be vital to have as much extended family involved in a two-year-old's life as possible upon the tragedy of losing his birth mother." She acknowledged that "memory doesn't really start for children until about two-and-a-half years of age" and that Alex "will not actually have absolute memories related to his mother," but opined that "it would be vital to make sure that a link connecting [Alex] to his mother through her parents would be available to him because ... that's how they'll be able to keep her memory alive in [Alex's] world, in his mind and in his memory." Schaefer-Space indicated her general belief that "a grandparent's relationship is vital in a child's life," even if no prior relationship existed.

Dr. Thomas Spahn, a psychologist who will be offered by Dawson, will testify that Dawson was "quite supportive" of Julia, and he never heard Julia "talk very favorably about her contact with her parents or believing that that was ... extremely ... valuable to her or the child." And although Dr. Spahn found no evidence to suggest that Dawson prevented Julia from seeing her parents, Dr. Spahn testified that a two-year-old would have no memory, or a very light memory, of people that he had not seen for more than six months. Dr. Spahn declined to offer an opinion about whether Alex would be at a substantial risk of emotional harm if he did not see the Keenans.

The Keenans have told you that since they consulted with you Mr. Dawson attempted suicide.

The Legislature enacted a grandparent visitation statute which provides in relevant part:

(b) In order to give deference to the decisions of fit parents, it is presumed in a proceeding under this subsection that a fit parent's decision to deny grandparenting time does not create a substantial risk of harm to the child's mental, physical, or emotional health. To rebut the presumption created in this subdivision, a grandparent filing a

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complaint or motion under this section must prove by a preponderance of the evidence that the parent's decision to deny grandparenting time creates a substantial risk of harm to the child's mental, physical, or emotional health. If the grandparent does not overcome the presumption, the court shall dismiss the complaint or deny the motion.

QUESTION 3 (87 POINTS)

As the attorney for the Keenans, advise them on whether or not you believe they can be given grandparent visitation by the court. Please explain you answer.