

Religion is often an issue in child custody battles where one parent is Wiccan. Whether or not the non-Wiccan parent actually believes the other parent's paganism is detrimental to the child is not always apparent. It seems the issue is often one of financial support rather than ideology, and the uncommon beliefs of the other parent are used as a convenient leverage against them as "proof" of unfitness as a parent. This is part of a broader pattern of discrimination against Wiccans, which seems to result from two issues: 1) whether or not Wicca is a "recognized" religion with Constitutional protections, and 2) whether or not the practices of Wicca are detrimental to a child (or neighborhood, etc.). Beliefs that it is detrimental seem to be based on ignorance of what the beliefs and practices really are, erroneous or distorted images of the religion based on superstition and culturally perpetuated stereotypes, and deliberate mischaracterization for purposes of defaming the parent in question to win custody.

Literature Review

There are a number of cases on record that show that religion is indeed often an issue in child custody battles where one parent is Wiccan. In "Religion as a Factor in Child Custody and Visitation Cases," there is an extensive listing from 45 of the 50 states, as well as some federal cases, of custody battles where religion was an issue. In *Petersen v. Rogers*, a child was taken from its adoptive parents and placed with the biological parents that gave him up after the Wiccan beliefs of the adoptive parents were called into question. *In re Huff* documents the termination of the biological parents' guardianship after questioning them about their Wiccan faith. And in *V.F.O. v. J.J.O.*, a mother suing for sole custody of her children had to defend her Wiccan beliefs and practices in court in response to charges made by the father.

"Some Moral Support From Another One Who Has Been There: Kate's Story" documents one woman's case: "Religion was never a problem until it became a handy way to

prove I was an unfit mother.” The father claimed Kate’s religious practices resulted in “an immoral lifestyle and [were] a danger to the health and welfare of our children.” His attorney cited the altar in her living room, attempting to prove the children were endangered by her athame and candles (“knives and open flame”) and rituals. He tried to prove that Wiccans practice open relationships, even through the duration of their marriages.

While it would be unconstitutional in our court system for religion to be used as the sole criterion for determining custody, the judges in these cases felt it was appropriate to examine the Wiccan practices of the parents in question “as they related to the health and safety of children” and therefore was not a violation of the First Amendment. Thus, it is supposedly not the parent’s religious beliefs that are being questioned or infringed, but whether that parent’s religious practices are harmful to the child.¹ In “What is Religion,” Lisa Price points out, “[b]elievers of less populous religions, such as Scientology, or of less socially acceptable religions, such as Satanism, or of ideals some would not call religion at all, such as Secular Humanism or Atheism, have sometimes less protected lives.”

Since the Supreme Court has never ruled on such a custody case, each state has its own criteria for assessing harm. The standard applied is usually one of three: immediate and substantial harm, risk of harm, or no harm.² Harm can be physical, emotional, psychological, moral, or spiritual. In deciding whether a parent’s religious practices constitute harm, according to “Child Custody: State Court Decisions,” there must be proof that those practices or beliefs are “illegal, immoral, or cause serious mental or bodily injury to the children” (referencing *In Re Marriage of Knighton*). But “Child Custody and Religion” points out that “regardless of which

¹ In *McLoughlin v. McLoughlin*, while stating “the law is absolutely impartial in matters of religion ... and... religious views afford no ground for removing children from the custody of the parent otherwise qualified,” they added that “all *Christian* religions stand on the same footing in the eyes of the law.” Emphasis mine.

² This only applies in the case of a parent with sole custody. “If the custodial parent objects to the non-custodial parent’s religious activities, that’s the end of it; the court will defer to the custodial parent’s wishes.”

legal standard your state court follows, using strong language or actions which offend the other parent may result in court restrictions on your religious activities or even cause a court to award sole custody of your children to your ex.”

The judge in *Kendall v. Kendall* suggested that harm could be determined by examining evidence from expert witnesses regarding “the child’s general demeanor, attitude, school work, appetite, health or outlook,” as well as turning to school and church authorities, doctors, and psychiatrists for information. He suggested appointing an expert to investigate, report, and take the stand to testify and be cross-examined. According to “Religious Differences in Child Custody and Visitation Disputes,” there is very little psychological or sociological research on the effects such religious complexities have on children; there has thus been no showing of harm.

Supposedly the “wholly uncorroborated testimony of a parent [is] insufficient to demonstrate harm.” However, the first pleading submitted in a case, the complaint, is often used to voice outrageous accusations without need (at this stage) of proof. The other party must provide a document to the court “answering” the charges in the complaint, before proof even becomes an issue. Terms sometimes used in such complaints include “unfit parent,” “child abuser,” or “devil worshipper.” While a judge may very well choose to throw out accusations of black magic or devil worship, if the answering party has not answered to his satisfaction, they are taking the chance that the judge will look more closely at the case, especially if there are also allegations of child abuse. As Kate says in “Some Moral Support...,” “If the religion had been left out of this entirely, there would have been no reason for a trial, but the Wiccan aspect makes everyone look at it a little harder. Attorneys and judges start reading hidden messages into everything you do, from lighting a candle to singing a song.” My proposed study would document evidence to defend against such accusations, and identify potential expert witnesses.

While it is abhorrent that a parent should have to defend her religion in court to keep her child, the current status quo is that her beliefs can be examined to determine whether they are illegal, immoral, or somehow otherwise do moral or spiritual damage to the child. The court in *Angel v. Angel* stated that courts have no authority over a child's religious training, except for "teachings that are subversive of morality and decency, and some others equally obnoxious." In the 20th century, courts have frequently decided that a religious household is a better moral and spiritual atmosphere for a child than a non-religious household, a church-going parent is better than a non-church-going parent, and a Christian parent is better than a non-Christian parent. Numerous cases refer to moral and spiritual, as well as physical and intellectual, well being, and religious training, or lack thereof, is used as an indicator of the appropriateness of the moral and spiritual atmosphere. Among these are *In Re Snellgrose*, *Commonwealth ex rel. Rainford v. Cirillo*, *Commonwealth ex rel. Pruss v. Pruss*, *Holsombeck v. Pate*, *Young v. Bach*, *Commonwealth ex rel. Lyter v. Witmer*, *Anhalt v. Fesler*, and *Schreifels v. Schreifels*.

Whether or not a non-Wiccan parent actually believes there is any danger to a child from a Wiccan parent, the uncommon beliefs of the Wiccan are often used as convenient leverage against them as "proof" of unfitness as a parent. This is part of a broader pattern of discrimination against Wiccans. Sources include *Crystal Seifferly v. Lincoln Park Public Schools*, in which the principal of plaintiff's school grouped witches together with drug users, white supremacists, Satanists, and other "undesirables;" *Roberts v. Ravenwood Church of Wicca*, in which the church was being taxed (in other words, not treated as a legal, non-profit, church); and *Van Koten v. Family Health Management, Inc.*, in which an employee was fired after telling his coworkers "... he considered Halloween to be the holiest day of the year in his religion."

Discrimination seems to be founded on ignorance of what the beliefs and practices of Wicca really are, erroneous or distorted images of the religion based on superstition and culturally perpetuated stereotypes, and deliberate mischaracterization for purposes of defamation. “Some Moral Support...” points out that “[m]any times, pagan women are portrayed as emasculating feminists, or flaky fluff heads.” Other sources include *State v. Howell*, in which a girl tried for murder was noted to be dysfunctional in several ways, including her “interest in witchcraft”; *State v. Leitner*, a criminal trial in which an attorney countered that “[t]he use of the word ‘witch’ to evoke terror in the jury... echoes the cries of ‘communist’ in the McCarthyist 1950s or ‘witch’ in the days of Salem”; *State v. Plaskett*, in which an attorney sought to impeach a witness’ reliability by showing she “... had a vivid imagination” and “did not restrict her thinking to verifiable facts” because of her interest in Wicca; and “The Pagan and the Pentagon” by Angela Kennedy, describing an Air Force Major who decided to “come out of the broom closet.” He states that he just “want[s] the world to know pagans are not just a bunch of fringe lunatics” He was also asked by a Baptist “how [he] could not believe in God.”

Discrimination is also based on whether or not Wicca is a “recognized” religion with Constitutional protections. The United States Army has recognized Wicca in its guide for chaplains (“Religious Requirements and Practices of Certain Selected Groups: A Handbook for Chaplains 1990); and in *Dettmer v. Landon* a prisoner sued for his right to have tools for Wiccan meditation. The government claimed in that case that Wicca is not a religion and thus not entitled to First Amendment protection. The court held to the contrary.³

³ Ground breaking Supreme Court cases defining religion for the purposes of determining constitutional protection under the First Amendment and the free exercise clause include *Thomas v. Review Board*; *Welsh v. United States*; *U.S. v. Seeger*; *Torasco v. Watkins*; and *Ballard v. United States*.

If anyone would like to talk to us (anonymously, if you wish, about custody issues because of your religion, please call us at _____ or email us at _____ with your story.