

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - DOMESTIC RELATIONS DIVISION

IN RE THE FORMER MARRIAGE OF:)
)
ADRIANA SCHMIDT,)
)
Petitioner,)
)
)
and)
)
MARIAN NIZNIK,)
)
Respondent.)
)

No. 00 D 18272 cons.
00 D3 31904

ORDER

This matter having been heard upon Respondent MARIAN NIZNIK'S ("Marian") emergency verified petition for injunctive relief and his Verified Petition for Rule to Show Cause for Adjudication of Indirect Civil Contempt of Court ("the Petition") filed February 17, 2006. Petitioner ADRIANA SCHMIDT ("Adriana") filed her response on June 12, 2006. The Court having heard the evidence presented in a two (2) day hearing states as follows:

Factual Background, Findings, and Analysis

The parties were divorced in Cook County on August 7, 2003. The parties have one child together ("the Child"), born July 21, 1997. Adriana was awarded sole custody of the Child subject to the terms of the parties' Parenting Agreement. According to Paragraph B of the Parenting Agreement, Adriana has sole decision-making

responsibility concerning the Child's normal and reasonable healthcare services.

However, Paragraph B also states as follows:

“Except in cases of emergency, where delay in obtaining appropriate medical or health assistance may be detrimental to the child, the parties shall confer before incurring any extraordinary healthcare services for the child herein. If the parties are unable to agree upon non-emergency extraordinary medical care, this matter may be submitted to mediation, and if that be unsuccessful then upon proper petition by either party to a court of competent jurisdiction.” (Emphasis Added)

Therefore, Paragraph B gives Marian the right to be consulted prior to the child undergoing any extraordinary non-emergency medical procedure. The fact that Marian and Adriana did not attempt to mediate the issue prior to petitioning the court does not deprive Marian of his right to exercise his decision-making authority under Paragraph B. The paragraph's language suggests that mediation is only optional rather than a prerequisite to initiating an action.

Approximately two weeks prior to the scheduled surgery date, the Child informed Marian of Adriana's plans for the Child to be circumcised. Marian spoke with Adriana about the surgery, at which time she informed him that the child had been experiencing irritation and infections on his penis. After expressing his views on circumcising the Child with Adriana, Marian initiated the present action. Therefore, this Court finds that the parents are divided in their positions as to the issue of circumcision as it currently relates to their child; the mother believing it to be warranted and the father believing it is not necessary.

At trial, both Marian and Adriana offered testimony on circumcision and whether it was necessary in this case. Dr. Gibbons and Dr. Van Howe were called as witnesses by

Marian. Dr. Goldstein and Dr. Hatch were witnesses called by Adriana. In addition, Marian, Adriana, and Adriana's husband, Alan Rovin testified at the trial. This Court finds that the evidence was conflicting and inconclusive as to any past infections or irritations that may have been suffered by the child. Moreover, this Court also finds that the medical evidence as provided by the testimony of the expert witnesses for each of the parties is inconclusive as to the medical benefits or nonbenefits of circumcision as it relates to the nine year-old child of the parties.

Additionally, issues of ethnicity or religious beliefs relative to circumcision were not raised by the parties and were accordingly not considered by the Court.

Permanent Injunction

In order to obtain a permanent injunction, a party must establish (1) a lawful ascertainable right in need of protection, (2) that an irreparable injury will result without the protection, and (3) that there is no adequate remedy at law. *Eagle Marine Indus. v. Union Pacific R.R.*, 363 Ill.App.3d 1166, 1184 (5th Dist. 2006). The purpose of a permanent injunction is to extend the status quo indefinitely after a hearing on the merits. *American Nat'l Bank & Trust of Chicago v. Carroll*, 122 Ill.App.3d 868, 881 (1st Dist. 1984). In the present case, Marian has a lawful ascertainable right via the parties' Parenting Agreement to be consulted before the Child undergoes any extraordinary non-emergency medical treatment. Although Adriana argues that circumcision is necessary to prevent any further irritation or infection, the evidence did not establish that circumcision was medically necessary in this case at the present time. As a result, the Court cannot conclude that the circumcision is an emergency, and it thus falls under the type of

extraordinary non-emergency treatment requiring Marian's consultation under the Parenting Agreement.

Secondly, Marian will suffer an irreparable injury without the injunction. Any non-emergency surgery for the Child is subject to Marian's consultation and approval per the parties' Parenting Agreement. Thus, Marian would be permanently and irreparably injured if the circumcision was to proceed without his consultation and agreement. Furthermore, the injury to the Child as a result of an unnecessary circumcision would be irreversible. As a minor, the Child is unable to make his own decisions regarding medical care. The Child, however, in his own written statement, has indicated that he does not wish to be circumcised. The Child's stepfather, Alan Rovin, also testified that he observed the Child's anxiety relative to the possibility of being circumcised. Additionally, the Child Representative, in his written closing argument, concludes that it is not in the best interest of his client to be circumcised at this time.

Lastly, Marian has no adequate remedy at law. The loss of his parental right of input in the Child's non-emergency medical care is not compensable with money damages. Additionally, the life-long consequences of the circumcision for the Child are not reparable with money damages.

In making its decision, the Court gave appropriate weight to issues of possible psychological and physical harm to the Child. Circumcision is an extraordinary medical procedure as it relates to a nine year-old child. An injunction may be modified or dissolved where the Court finds that a change in the law or facts since the injunction's entry no longer justifies its continuance. *Field v. Field*, 79 Ill.App.2d 355 (3rd Dist. 1967). Therefore, the permanent injunction shall terminate when the Child reaches

majority and is able to decide for himself whether he wishes to be circumcised. The injunction is also modifiable by the Court should there be a substantial change in circumstances.

Petition for Rule to Show Cause

Marian also argues that a Rule should issue against Adriana to show cause why she should not be held in indirect civil contempt of the Court for unilaterally scheduling the Child for circumcision without first notifying Marian. This Court declines to hold Adriana in contempt because Marian was in fact notified in advance of the surgery. Although Adriana may have scheduled the Child for surgery without Marian's consent, Marian received notice of the surgery before it took place and instituted the present action in accord with the rights afforded him in the parties' Parenting Agreement.

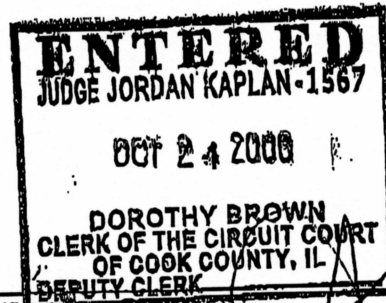
On the basis of the entire record and the reasons set forth herein, it is hereby ORDERED:

1. It is in the best interest of the child not to be circumcised at this time.
2. Petitioner is enjoined from consenting to the Child's circumcision without further order of the Court.
3. The injunction shall terminate when the Child reaches age eighteen (18).
4. Respondent's Petition for Rule to Show Cause for Adjudication of Indirect Civil Contempt of Court is Denied.

5. Sufficient evidence was presented for the Court to determine that each of the parties shall be responsible for their own reasonable attorneys' fees and costs.

DATED:

ENTER:



JORDAN KAPLAN, JUDGE

Prepared by Court