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Frase v. Barnhart:**Conditions Cannot Be Placed on Custody Awards Because Conditions Impermissibly Interfere with Parents' Right to Make Child Rearing Decisions**

By: Thomas Sova

The Court of Appeals of Maryland held conditions cannot be placed on custody awards because conditions impermissibly interfere with parents' right to make child rearing decisions. *Frase v. Barnhart*, 379 Md. 100, 103, 840 A.2d 114, 115 (2003). In so holding, the court of appeals made it clear that conditions placed on custody are inappropriate because they violate parents' due process guarantees. *Id.*

Deborah Frase (Frase) was a single mother of three children—Justin, Tara, and Brett. Frase struggled with drugs and alcohol for quite some time. During November 2001, Frase and her children lived with her mother, Ms. Keys. Around that time, Frase was arrested and she requested that Ms. Keys place Tara and Brett with another couple. Ms. Keys ignored her daughter's request and placed the children with two families she knew from church – the Eskows and Barnharts.

Upon her release from jail, Frase regained custody of Tara and Brett and moved into a trailer with two other adults. The trailer's crowded living conditions proved to be too much and Frase allowed the Eskow family to take physical custody of Tara. Frase retained custody of Brett. The Barnharts filed a complaint in the Circuit Court for Caroline County seeking to regain custody.

Frase attempted to obtain counsel, and testified that overloaded or conflicted schedules precluded her from getting a legal service agency attorney. Frase, therefore, filed a *pro se* answer and counterclaim. At the April 15, 2002 scheduling hearing, Frase requested the court to appoint an attorney for her son, but she did not request an attorney for herself. On May 20, 2002, an evidentiary hearing was held before the master of the Circuit Court for Caroline County. Frase appeared without counsel and did not request counsel. Frase testified, presented witnesses, and cross-examined Barnhart's witnesses.

The master filed a report and recommendation on June 3, 2002 and recommended Frase be given custody of Brett provided she met the following conditions: (1) immediately apply and obtain housing at Saint Martin's House; (2) Brett spend every other weekend with the Barnharts, so long as his brother, Justin, was still in their home; (3) cooperate with the Family Support Center and the Department of Social Services of Caroline County; and (4) the matter was reviewable in ninety days. Frase filed exceptions claiming her right to counsel was denied and the court-imposed conditions were unfair.

The trial court integrated the custody conditions into its orders and scheduled a review hearing. Frase

filed an emergency motion to strike the conditions. Frase also requested postponement of the review hearing, unless counsel was provided, so she could have her fourth child. The trial court denied the postponement request and made no ruling on Frase's other motions. Frase appealed and the Court of Appeals of Maryland granted certiorari.

The court first addressed the issue of whether the November 1, 2002 order was an interlocutory order, and if it was, whether it fell within the scope of Maryland Courts and Judicial Proceedings § 12-303(3)(x). *Id.* at 110, 820 A.2d at 120. Section 12-303(3)(x) states that an interlocutory order "depriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order" is immediately appealable. *Id.* The court of appeals reasoned that if any of the September 16, 2002 orders were intended as final in nature, then the November 1, 2002 order could have no meaning. *Id.* at 115, 820 A.2d at 122. Thus, the court held the September 16, 2002 orders were interlocutory making the November 1, 2002 orders interlocutory as well. *Id.*

The court next decided whether the November 1, 2002 order effectively deprived Frase custody of her child, and if it did, whether the

order was immediately appealable under Section 12-303(3)(x). *Id.*, 820 A.2d at 123. The court held the November 1, 2002 order was immediately appealable under Section 12-303(3)(x) because the custody conditions essentially eliminated Frase's discretion regarding the legal and physical custody of her children. *Id.* at 119, 820 A.2d at 125.

Finally, the court examined the validity of the conditions attached to the custody award, namely, the visitation provision and requirement that she apply and accept housing at Saint Martin's House. *Id.* at 120, 820 A.2d at 125. The United States Supreme Court made it clear in *Troxel v. Granville*, 530 U.S. 57 (2000) that the due process clause "does not permit the state to infringe on the fundamental right of parents to make child rearing decision simply because a state judge believes a 'better' decision could be made." *Id.* at 125, 820 A.2d at 128.

The Court of Appeals of Maryland resolved the visitation condition by stating that *Troxel* prohibits forcing a mother to take her child to a place occupied by people who were her adversaries. *Id.*, 820 A.2d at 128-29. The court recognized Frase was not opposed to visitation between Brett and Justin and she simply wanted some control in deciding visitation terms. *Id.*, 820 A.2d at 128.

The court dealt with the condition that Frase apply and accept housing at Saint Martin's House, stating it was contrary to *Troxel* to require Frase to move with Brett to a

locations undesirable to her. *Id.*, 820 A.2d at 129. As Frase was found to be a fit parent, the court stated "the [trial] court had no more authority to direct where she and the child must live than it had to direct where the child must go to school or what religious training, if any, he should have, or what time he should go to bed." *Id.*

This opinion is important for attorneys, judges, and non-attorneys alike because it makes clear to those involved with custody disputes that conditions cannot be placed on custody if they interfere with the fundamental right to parent a child. This opinion is also important because it is a start to insuring that even the poorest parents have representation in cases that could cost them their children.

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