

Religion Joins Custody Cases, to Judges' Unease



Eric Schultz for The New York Times

Laura and Brian Snider want to regain primary custody of her daughter, Libby Mashburn, 11.

By NEELA BANERJEE
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MADISON, Ala. — On a January night nine years ago, Laura Snider was saved.

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Laura Snider believes she and her husband, Brian, lost primary custody of her daughter, Libby, because of their religious beliefs.

A 27-year-old single mother at the time, Mrs. Snider felt she had ruined her life through a disastrous marriage and divorce. But in her kitchen that night, after reading pamphlets and Bible passages that her boss had pointed her to, she realized she was a sinner, she said, she prayed for forgiveness, and put her trust in Christ.

Four years later, the conservative brand of Christianity Mrs. Snider embraced became the source of a bitter, continuing custody battle over her only child, Libby Mashburn.

Across the country, child-custody disputes in which religion is the flash point are increasing, part of a broader rise in custody conflicts over the last 30 years, lawyers, judges and mediators say.

“There has definitely been an increase in conflict over religious issues,” said Ronald William Nelson, a Kansas family lawyer who is chairman of the custody committee of the [American Bar Association](#)’s family law section. “Part of that is there has been an increase of conflicts between parents across the board, and with parents looking for reasons to justify their own actions.” Another factor, he said, is the rise of intermarriage and greater

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willingness by Americans to convert.

Nobody keeps track of who wins in these religious disputes, but lawyers say that judges are just as likely to rule in favor of the more religiously engaged parent as the other way around. That is because, for constitutional reasons, judges are reluctant to base their rulings primarily on the religious preferences of parents.

Judges do not want to take on custody disputes rooted in religion, said lawyers like Gaetano Ferro, who until recently served as president of the American Academy of Matrimonial Lawyers. Mr. Ferro said, "How will a judge say in any rational fashion that Islam is better than Buddhism, Catholicism better than Judaism, or Methodism better than Pentecostalism?"

As a result, more and more states have tried to keep custody disputes out of court by mandating mediation. But the effect has been piecemeal, and religious disputes have proven to be among the most difficult to resolve, lawyers said.

From the age of 1 month, Mrs. Snider's daughter had lived with her, and later Mrs. Snider's new husband, Brian Snider, with occasional visits to her biological father.

But in 2003, when Libby was 6, an [Alabama](#) court gave primary custody to her father, William Mashburn, after he and Mrs. Snider's own family argued that the strict religious upbringing Libby received at her mother's home, which involved modest dress, teachings about sin and salvation, and limited exposure to popular culture, was damaging her.

"We were easy targets because we were made to look like cultists," Mrs. Snider, 36, said. "I think whether anyone admits it or not, almost all of the ruling had to do with religion. Nothing I had done was called into question except that."

Generally, custody disputes are resolved outside the courtroom, lawyers said.

Such cases have increased, however, because a generation ago, mothers almost always got custody and were responsible for nearly all aspects of children's upbringing. But now, both parents are usually involved in raising children after divorce, and that can lead to dispute. Data regarding custody cases are not uniform, according to the National Center for State Courts, but for 10 states for which it has data from 2002, all show an increase in custody cases coming to trial.

Conflicts sometimes arise when an interfaith marriage dissolves or when one parent converts to a different religion after divorce.

In Oregon, a dispute between James Boldt and his former wife, Lia, was recently decided by the State Supreme Court. Mr. Boldt, the custodial parent, converted to Judaism after the divorce and sought to have their son, now 12, convert, and be circumcised.

The court ruled that custodial parents could generally decide if a child should be circumcised. But given the son's age, it ordered the lower court to ascertain his wishes. If they conflict with his father's, the court may have to reconsider the custody arrangement, the court ruled.

Tensions can emerge when one parent takes a turn toward fundamentalism. In 2006, the [United States Supreme Court](#) let stand a decision by the Supreme Court of Pennsylvania that permitted Stanley Shepp to tell his 14-year-old daughter about [polygamy](#).

Mr. Shepp and his former wife, Tracey Roberts, were Mormons living in York, Pa., when they married. But Mr. Shepp espoused polygamy as a tenet of their faith.

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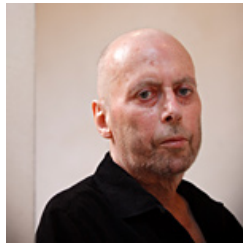


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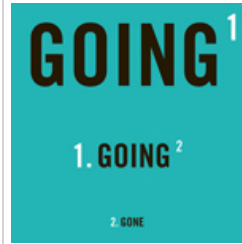
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Ms. Roberts contends that Mr. Shepp spoke to one of her daughters from a previous marriage about marrying him, which he denies. She left Mr. Shepp and has primary custody of their daughter. He was excommunicated by the Church of Jesus Christ of Latter-day Saints for his polygamist views and is now part of a Mormon fundamentalist movement in Utah.

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Mr. Shepp petitioned for better-defined custody rights for his daughter, but Ms. Roberts objected because he had exposed the child to polygamist Mormon communities. The court upheld Mr. Shepp's right to teach his daughter about polygamy, saying it could not find evidence that such teaching harmed her physical or mental health.



Judges risk violating the separation of church and state if they try to choose the faith a child should be raised in, legal experts said. But in situations like Libby Mashburn's, judgments about parenting can become entwined with religion.

In upholding the rulings of lower courts to grant primary custody to Mr. Mashburn, the Supreme Court of Alabama said the Sniders's involvement in missionary work took Libby away from her extended family in Alabama. The Sniders are quietly, unapologetically fundamentalist. They believe that American culture, even conservative denominations like the [Southern Baptist Convention](#), has drifted perilously far from biblical teachings. They attend a large Independent Baptist church in Madison, where the music, the sanctuary and the congregants are unadorned and old-fashioned.

Women wear skirts as a sign of modesty. They do not swim in mixed company. They eschew rock music and nearly all popular culture. They do not drink, smoke or swear.

The Sniders have raised Libby, now 11, in that tradition. But it has put them at odds with Mr. Mashburn and Mrs. Snider's family. Mr. Mashburn and his lawyer declined to comment .

Mrs. Snider said she understood that Libby might wear pants at her father's home or go to the movies. But she insisted that Mr. Mashburn not swear or drink in front of Libby or expose her to inappropriate movies and music, which, she said, he has repeatedly done.

The Sniders have repeatedly appealed to win back primary custody. They are awaiting yet another decision from a hearing in November.

At the last hearing, Libby, who spends about 40 percent of her time with the Sniders, testified against Mr. Mashburn.

"I'm more of my mom's religion, and my dad sometimes talks bad about my mom," she said. "He called it a cult, and it's definitely not a cult. It kind of makes me mad sometimes.

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Maybe he thinks her religion may be bad for me, but I think mainly he doesn't like my mom and is using that as an excuse."

Some states like California and Connecticut have taken innovative steps to get parents to resolve custody issues outside court. In Connecticut, for example, those seeking a court order have to meet with a family-relations specialist in an effort to negotiate. If that fails, they attend a daylong session to settle their differences before a panel that includes a lawyer and a mental health professional.

Even after a case goes to court, little may be resolved.

Aaron Petty of Minneapolis and Gineen Gove of Black River Falls, Wis., had their daughter, Basyl, 17 years ago. The couple split up when Basyl was 4. Soon afterward, Ms. Gove married, and she and her husband converted to Old Order Amish.

As Mr. Petty saw his daughter over the years, he became concerned, he said, when Basyl was about 11 and he learned that the Goves would not let her go to school past eighth grade, a common decision among the Amish.

Mr. Petty petitioned for primary custody so that Basyl might continue her education. "This case wasn't about religion for me," he said. "It was about her education."

He won the case when Basyl was 14, but she disappeared. Mr. Petty said he suspected Basyl was living within the Amish community. The Goves declined to talk about the case.

"I wanted to offer my daughter options for her future, in case she grew up and didn't remain Amish," Mr. Petty said in a phone interview. "At 12, 13, 14, making lasting drastic decisions based on faith isn't an appropriate time."

Mr. Petty's voice caught as he continued. "Was that case worth fighting? In hindsight, no. I haven't seen my daughter in two-and-a-half years."

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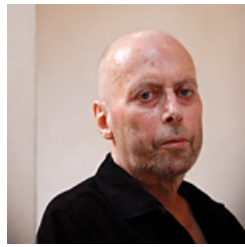
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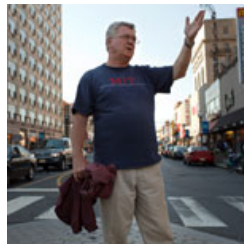




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