

A report on the Jennifer Ireland case

Child Care Not a Proper Basis for Custody Charge

by Elissa Gershon

A mother's use of child care while she attends college classes is not a basis for removing the toddler from her mother's custody, the Michigan Court of Appeals ruled in November in the case of Ireland v. Smith. The Court's ruling reversed the widely publicized decision last summer in which Jennifer Ireland lost custody of three year old Maranda, solely because she placed her daughter in family day care while she attended college classes at the University of Michigan.

In April 1991, Jennifer Ireland, a junior in high school, gave birth to Maranda. Maranda and Jennifer lived with Jennifer's mother until Jennifer began college with a full scholarship to the University of Michigan, at which time they moved into family housing on campus. She enrolled Maranda in a university recommended family child care program near campus for about 35 hours a week. In December 1993, when Jennifer went to court seeking child support (which was eventually awarded at \$12 per week), Maranda's father, Steve Smith, petitioned for custody of Maranda, whom he did not see until she was one year old. Smith lived with his parents and worked part time while he attended community college.

At trial, despite finding that Maranda had an established custodial environment with her mother, the judge favored Smith, solely because his mother, a homemaker,

was available to care for Maranda full time. In his decision awarding custody to Smith, he stated, "Under the plan of the mother, the minor child will be in essence raised and supervised a great part of the time by strangers. Under the future plan of the father, the minor child will be raised and supervised by blood relatives."

The judge's remarks illustrate what family law experts describe as a pervasive judicial bias against out-of-home child care and, some say, against working mothers in general. Rather than giving due weight to the quality of the parent-child relationship and the quality of the child care, the judge apparently made an automatic, but not uncommon, assumption that "biological care" is always preferable to care by a non-relative. Indeed, in this case, the judge found no fault with the quality of the child care, and observed that Maranda had had a "meaning-

ful experience" in the family day care home where she had been cared for during the past year.

The judge's preference for relative care over family child care conflicts with current research on this subject. The Families and Work Institute recently published a study entitled *The Study of Children in Family Child Care and Relative Care*, which concluded that 87% of regulated family child care providers were adequate or good providers, while 69% of relative providers were inadequate overall.

The study found that relative and non-relative providers who choose child care as a profession tend to obtain more formal education and child care training, become regulated, plan activities for the children, and belong to support networks. As a result, these providers were found to be more sensitive and more responsive to the children they care for, which are two significant indicators of quality child care.

In reversing the trial court's decision, the Court of Appeals concluded that "in light of the undisputed evidence that [Jennifer's] child care arrangements are appropriate and working well, the evidence does not support the trial

court's judgment that the defendant's proposed, but untested, plans for the child's care would be better." The Court also criticized the trial judge's speculation that "there is no way that a single parent, attending an academic program at an institution as prestigious as the University of Michigan, can do justice to their studies and to raising of an infant child."

This decision has broad and significant implications for families in Michigan and nationwide. While the trial court found Maranda's child care arrangements to be a "pivotal" factor in the consideration of the permanence of her family unit, the Court of Appeals held that an evaluation of child care arrangements is not an appropriate consideration under this factor. The Court of Appeals found that the trial court erroneously considered the *acceptability*, not the *permanence*, of the home.

The Michigan decision signals an enormous victory for working parents and for children's advocates who strongly opposed the trial court's change in custody. The Court of Appeals agreed with the arguments put forth by the Child Care Law Center (CCLC) in a friend of the court brief filed on behalf of 13 women's and children's organizations. The brief addressed several areas of great concern to CCLC and organizations that signed on to the brief.

First, the trial court wrongly considered child care a factor that would disrupt the "permanence" of Maranda's family unit. CCLC argued that child care should not be a relevant factor in a custody determination unless it is shown to harm a child in some way.

Second, CCLC argued that, contrary to the trial court's assumption that

Maranda's family day care arrangement is inherently inferior to care by her grandmother, extensive research shows that child care can positively and significantly impact young children's development, and Maranda does, in fact, benefit from her child care arrangement.

Third, the brief pointed out that numerous courts nationwide are highly critical of custody awards that penalize a parent's use of child care. In addition, federal and state policies recognize the importance of child care to families who work or attend school through subsidy programs for child care.

Fourth, the brief argued that the trial court's decision, which effectively penalized Jennifer Ireland for going to college and using child care, is contrary to current welfare policy, maintenance law, and child custody and support law, which encourage mothers' efforts to support themselves and their families. A number of court decisions in other states have also ruled that a custodial parent's use of child care is not a basis for transferring custody. In California, a trial court awarded custody to a child's father after the mother took a job that required her to use child care. Despite the fact that the child had lived only with the mother since birth, the court awarded custody to the father based on his superior economic position and because the mother had placed the child in child care.

The case went to the California Supreme Court, which overturned the lower court's decision, stating, "The essence of the court's decision is simply that care by a mother who, because of work and study, must entrust the child to daycare centers and babysitters, is per se inferior to care by a father who also works, but can leave the child with a step-

mother at home . . . this reasoning is not a suitable basis for a custody order."

Courts in New Mexico and Utah, among other states, have similarly recognized the Catch 22 that would result if parents who must work outside the home to support their families were punished for doing so by losing custody of their children.

Despite these favorable rulings, however, it should be noted that cases like these ones are far from unusual and that parents may still have to fight this same battle in their own states. Since Jennifer Ireland's case made nationwide headlines, two similar custody battles have become national news.

In 1994, Sharon Prost, an aide to Senator Orrin Hatch, lost custody of her two boys when a judge ruled that she placed her career demands ahead of her family's needs. Critics of the decision said that the judge held Prost to a higher standard of parenting than the children's father and did not fairly consider the time Prost spent with her children.

More recently, Marcia Clark, prosecutor in the O. J. Simpson murder trial, found herself in a custody battle with her ex-husband, who claimed that her job is preventing her from being a good parent.

Although a recent Michigan Supreme Court decision requires the Court of Appeals to remand the Ireland case for a partial new trial, the Court indicated that it would have reversed the trial court outright and resolved the matter. Additionally, the Court of Appeals ruled that a different trial judge will hear the case in light of the appearance of bias on the part of the first trial judge.

Meanwhile, Jennifer Ireland is con-

tinuing her studies at the University of Michigan, where Maranda is thriving both in her family day care program and in preschool.



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