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THE HIGH COURT

IN THE MATTER OF THE GUARDIANSHIP OF INFANTS ACT 1964
AND IN THE MATTER OF S.O.B. AN INFANT
AND IN THE MATTER OF THE FAMILY LAW (MAINTENANCE OF SPOUSES
AND CHILDREN) ACT 1976

BETWEEN/

C.O.B.

PLAINTIFF

AND

A.O.B.

DEFENDANT

AND

THE HIGH COURT

IN THE MATTER OF THE GUARDIANSHIP OF INFANTS ACT 1964
AND IN THE MATTER OF S.O.B. AN INFANT

BETWEEN/

A.O.B.

PLAINTIFF

AND

C.O.B.

DEFENDANT

Judgment of Mr. Justice Lynch delivered the 12th day of
November 1985

This is a difficult case made all the more difficult
by the fact that the wife has not attended on either of the two
days on which I heard evidence in the case, namely the 22nd of

October, 1985 and today the 12th of November, 1985.

On the 22nd October, 1985 the wife was represented by Solicitor and Counsel who handed in a rather inadequate last minute medical certificate to the effect that the wife was unable to attend Court owing to gastric flu. As there were a number of witnesses in attendance from County Donegal I decided to proceed with the hearing of the evidence then available but I excused Counsel for the wife from having to cross-examine the husband until Counsel would have obtained further instructions from his client. Counsel was, of course, free to cross-examine the husband and the other witnesses if he so wished. Having heard the evidence of the witnesses called on the 21st October, 1985 I adjourned the further hearing from the 21st October until today when I had anticipated that Counsel for the wife would cross-examine the husband and would then adduce such further evidence as he thought fit. On today, however, there was no attendance by or on behalf of the wife. A letter from the wife's Solicitors to the husband's Solicitors was handed in by Counsel for the husband indicating that the wife's Solicitors were no longer acting for her and I heard evidence from the husband that the wife had said to him that she had no intention of coming to Court.

I decided to proceed with the case and heard further evidence from the husband and further witnesses called on his behalf.

The parties married in 1972 and they have one child, namely, S.O.B. born on the 31st December, 1973. It is with S's custody that I am primarily concerned in these cases.

Both parties suffered from alcoholism during their marriage. Both underwent treatment for this condition in Donegal and in the

Rutland Centre in Dublin. The husband has overcome his alcoholism and has not taken alcoholic drink for over three years. The wife has not overcome her alcoholism and still takes alcohol to excess.

It is unnecessary to review in detail the history of the marriage and the various places in Ireland where the parties lived. Suffice it to say that they had lived in Glenties County Donegal for some years before commencing treatment in the Rutland Centre in Dublin for alcoholism. At the time of commencing such treatment which was about the latter end of 1982, they moved from Glenties to live in Bray, County Wicklow in order to facilitate attendance at the Rutland Centre. They eventually split up in or about the month of September, 1983 when S. was left by agreement in the custody of the wife with access provisions for the husband.

I am satisfied that S. has deteriorated in many ways since leaving Glenties, County Donegal, and more especially since the husband and wife split up. At the present time the wife and S. are living in a South city suburb of Dublin in what I am satisfied are unsatisfactory circumstances so far as the welfare of S. is concerned. I think that S. is at risk of becoming delinquent if matters go on as they are at present.

The primary conflict in these two cases is a claim and cross-claim between the husband and the wife for custody of S. As the case is one between the father and the mother of the child I must give full effect to Section 3 of the Guardianship of Infants Act 1964 and I must therefore have regard to the welfare of S. as the first and paramount consideration. See the judgments of the Supreme Court in

March, 1985 in M.C. & M.C .V. K.C & A.C and An Bord Uchtala.

If I give custody of S. to the husband it will certainly cause upset to S. However, this will be mainly because S. and her mother (the wife) have reversed their roles so that S. who is not yet quite twelve years old feels responsible for the welfare of her mother the wife. I am satisfied that the husband's motivation in bringing his claim for custody of S. is the welfare of S. and is not his matrimonial difficulties with the wife. I have come to the conclusion that the welfare of S. requires that custody be given to her father, the husband, and I accordingly so order.

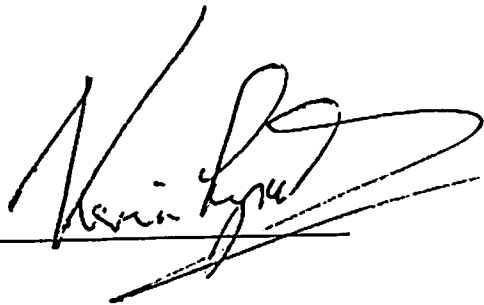
I make this Order on the understanding that the husband has made and will continue to make suitable arrangements for the welfare of S. with the assistance of his brothers, sisters and parents and especially Mr. & Mrs C.O.B. who have agreed to take S. into their home until Christmas, 1985.

The wife shall have access to S. from 11.30 a.m. to 7.30 p.m. on each Saturday up to and including Saturday the 14th of December, 1985. For the purpose of such access S. is to be collected by the wife from a coffee shop in D. opposite the D. shopping centre. From Saturday the 21st December, 1985 and thereafter access shall include overnight access from mid-day on Saturday to 6 p.m. on Sunday and the arrangements for collection are to be the same. S. is to be re-delivered to the village of D. at the end of each period of access from where she can make her own way to the home of Mr. & Mrs. C.O.B. or from where she can be collected by Mr. or Mrs. C.O.B. or someone on their behalf. The wife may also have such further or other access as may be agreed

between the parties.

So far as maintenance is concerned this is presently payable under a District Court Order at the rate of £300 per month and £90 per month for the wife and S. respectively. I shall vary this simply by removing the provision of £90 per month for S. and I shall leave the figure of £300 per month for the wife to stand. The cesser of the £90 per month in respect of S. is to take effect as and from the month of December, 1985 and payment at the rate of £390 per month, that is to say £300 for the wife and £90 for S. is to be made in respect of the month of November, 1985.

Signed: _____

A handwritten signature in black ink, appearing to read "Kevin Lynne", written over a horizontal line. The signature is stylized and cursive.