

**Baekmann v Baekmann**

2008 NY Slip Op 30009(U)

January 7, 2008

Supreme Court, Greene County

Docket Number: 0020071/4591

Judge: Joseph C. Teresi

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STATE OF NEW YORK  
SUPREME COURT

COUNTY OF GREENE

DONNA A. BAECKMANN,

Plaintiff,

-against-

**DECISION and ORDER**  
**INDEX NO. 07-1459**  
**RJI NO. 07-1459**

THOMAS BAECKMANN,

Defendant.

Supreme Court Greene County All Purpose Term, December 10, 2007  
Assigned to Justice Joseph C. Teresi

**APPEARANCES:**

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Ravena, NY 12143

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*Attorney for Defendant*  
331 Main Street  
Catskill, NY 12414

Robert J. White, Esq.  
*Law Guardian*  
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**TERESI, J.:**

By an Order to Show Cause dated October 9, 2007 plaintiff wife moves for *pendente lite* relief: a) granting plaintiff custody until final judgment in the proceeding of the child of plaintiff and defendant, Ashley Baeckmann, (DOB 1/27/00); b) awarding plaintiff temporary child support until final judgment in the proceeding in the amount of \$428.00 bimonthly plus ½ of the

uncovered and unreimbursed health related expenses; c) appoint a Law Guardian on behalf of the child; d) directing psychological examinations.

Defendant/Husband opposes the motion and cross-moves for *pendente lite* relief: a) maintaining the current existing joint physical and legal custodial arrangements of the child; b) amending the physical custody schedule so as to grant the defendant additional custodial time with the child through Sunday overnight visitation on the weekends and granting him physical custody of the child through Monday holidays immediately succeeding his regular alternating weekend visitation; c) maintaining the currently existing Temporary Order of Support in the amount of \$428.00 every two weeks payable through the Greene County Support Collection Unit, together with one-half (½) of all uncovered or unreimbursed health care related expenses, but subject to defendant's right to apply to modify the same downward should the facts and circumstances exist justifying the same; d) appointing a Law Guardian on behalf of the parties' daughter; e) appointing Dr. Craig Lennon of Catskill Family Institute or any other similar experienced mental health professional to perform a complete forensic mental health evaluation to file a report with the Court making custody/visitation recommendations to the Court; f) denying plaintiff's instant application to move the parties' daughter to Ravena-Coeymans Central School District and to enroll the child in that school district.

The Law Guardian who was appointed at a preliminary conference in this held on November 8, 2007 has filed an affidavit on behalf of his client.

This action was commenced by the filing of the Summons and Complaint on October 11, 2007. There is one child of the marriage, Ashley, born on January 27, 2000. On January 29, 2007, the parties separated with the husband leaving the marital residence, and residing with his

mother in Cairo, New York and in the summer of 2007 began residing with an unrelated woman in Cairo, New York who is now his fiancé . In the interim, the marital residence has been sold and the funds from that sale are being held in escrow by an attorney.

Prior to the commencement of this action there were proceedings held in the Greene County Family Court. Cross Petitions were filed for custody and a second proceeding was instituted by the wife for child support and spousal maintenance. These proceedings were both settled by agreement of the parties.

The agreement for support resulted in the parties agreeing that the defendant would pay the first mortgage including taxes on the house until the house is sold. This payment was in lieu of child support and upon the sale of the house he would pay child support in the sum of \$428.60 twice a month and one-half of any uncovered or unreimbursed health related expenses.

In addition an order of custody was entered on July 12, 2007 in Family Court which provided for joint custody between the parties and that the parties would exercise custodial time every other weekend from Friday until Sunday and either one or two overnights during the school week.

Plaintiff/Wife maintains that since the entry of the order of custody there has been a change in circumstances. She maintains that the defendant/father has not followed the recommendations of the Counselor or been flexible in respect to custodial time. Specifically, the husband or the father has kept the child at his girlfriend's home to sleep, his brother's home or his parent's home which causes the child anxiety. He badgers the child and makes her feel guilty about her feeling and conveying them to either the mother or her counselor. The arrangement of having the parties' child live in an atmosphere with the father's girlfriend and her four children

has caused the child anxiety, particularly when the defendant father works a night shift from 9:30 p.m. until 8:30 a.m. on a regular basis.

Plaintiff/Wife makes many other allegations against the defendant/father. Many of which are unspecific, based upon hearsay or other inadmissible evidence. The parties apparently have difficulty adjusting to parenting time when their schedules differ and in respect to exercising parenting time during vacations.

The plaintiff mother seeks to relocate to Ravenna and have the child placed in that community's school district. However, other than her own personal preferences, she presents to the Court very little admissible evidence to show that such a transfer would be in the best interest of the child.

Defendant/Husband denied the negative allegations of the plaintiff/wife. He seeks increased custody time. However, his affidavit provides the Court with little information to justify that change.

The Law Guardian submits an affirmation on behalf of his client which in effect takes the position that: the joint custody order with primary physical custody to the mother should remain with no change in the school district; that the father should have visitation each Monday, Wednesday, and Thursday evening after school until 6:30 p.m. where upon the mother shall pick up the child in the following manner: the mother shall pull up to the front door of the McCormack residence, sound her horn once, if necessary, and not excessively. The mother shall stay inside her vehicle and await the child, Ashley, to exit the McCormack home and get into the car; where upon the mother shall drive away without further delay. The father shall ensure that Ms. McCormack, stay inside the home during this transfer; that the parties refrain from making

or allowing gratuitous or annoying or alarming comments, messages, suggestions of any kind that serve no legitimate purpose; that the father shall have visitation on alternate weekends beginning on Friday after school, and ending on Sunday at 6:30 p.m. with the transfer to be affected in the same civil manner as described above; that the father shall ensure that Ashley does not operate a four-wheeler, only rides with an adult and wears all required safety equipment when riding one, especially a proper helmet, that she wears a safety harness when hunting in a tree stand, that an adult properly supervises her needs when bathing, ensure daily change of all clothing and proper grooming; that the father shall be allowed to speak to Ashley on the telephone once a day for a period not exceeding ten (10) minutes; that the father is to allow a similar phone call to the mother by the child and allow the child to go to a quiet room away from the distraction of the other children while telephoning her mother; that the parties are not to question the children at length about any of the issues in this case, keep conversation light and age appropriate and use their best efforts not to make the child feel like a spy for either side; that the Child Support Order remain the same without change; that the requested psychological evaluations be denied as unnecessary.

Based upon the record before the Court and the lack of credible evidence provided by the parties; and in consideration of the best interests of the child, it is

ORDERED, that the joint legal custody with primary physical custody to the mother remain the same, and it is further

ORDERED, that there be no change in the child's school district unless upon further order of the Court, and it is further

ORDERED, that the father shall have visitation each Monday, Wednesday, and Thursday

evenings, after school until 6:30 p.m., whereupon the mother shall pick up the child in following manner: the mother shall pull up to the front residence of the McCormack residence, sound her horn once, if necessary, and not excessively. The mother shall stay inside her vehicle and await the child Ashley to exit the McCormack home and get into the car, whereupon the mother shall drive away without further delay. The father, shall ensure that Ms. McCormack at all times stays inside the home during this transfer, and it is further

ORDERED, that the parties shall refrain from making or allowing any gratuitous or annoying or alarming comments, messages, suggestions of any kind that serve no legitimate purpose about each other, the issues of this case or any other issues related to any matters currently under litigation, either directly or indirectly to the daughter, and it is further

ORDERED, that the father shall have visitation on alternate weekends beginning on Friday after school, and ending Sunday at 6:30 p.m. with the transfer of the child to be affected in the same way as described above and in a civil manner, and it is further

ORDERED, that the father shall ensure that Ashley does not operate any four-wheeler, motor cycle, snow mobile or similar mechanized instrument or vehicle and shall only ride with an adult and wear only properly safety equipment when riding one especially a proper helmet; that she wears a safety harness when hunting in a tree stand; that an adult properly supervises her needs when bathing, ensuring daily change of all clothing and proper grooming on a daily basis, and it is further

ORDERED, that the father shall be allowed to speak to Ashley on the telephone once a day for a period not exceeding ten (10) minutes, and that the father shall allow a similar phone call to the mother by the child and allow the child to go to a quiet room or area away from the

distraction of the other children while telephoning the mother. The parties shall cooperate and encourage these phone calls and shall not in any way, retard, delay, or interfere with the making of these phone calls, and it is further

ORDERED, that the parties are not to question the child about the issues of this case directly or indirectly; must at all times keep any conversation with the child light and age appropriate and use their best efforts not to make the child feel like a spy for either side, and the parties shall refer to the other either directly or indirectly to the child in neutral or complimentary terms and shall not allow any other person to refer to any party of this litigation in any negative, uncomplimentary or improper terms or verbiage, and it is further

ORDERED, that the child support award now in effect (\$428 bi weekly) shall remain the same and shall not be modified, and that the payments must be made through the Greene County Support Collection Unit. Plaintiff shall have a judgment against defendant for any child support arrearages of the Family Court order or not timely paid under this order, and it is further

ORDERED, that all psychological evaluations requested by the parties are denied as unnecessary, and it is further

ORDERED, that the parties shall periodically, that is, at least every seven (7) days report to the Law Guardian in respect to the progress being made concerning phone calls, the child's schooling and other activities, and it is further

ORDERED, that the Law Guardian shall have the right to make further immediate application to Court for any sanctions or any further modification of this order based upon the conduct of the parties, and it is further

ORDERED, that this order shall be effective immediately.

Any relief not specifically addressed is denied. All motions are granted or denied without attorneys' fees or costs.


All papers, including this Decision and Order are being returned to the attorneys for Plaintiff/Wife. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

The final conference in this case will be held on March 14, 2008, 9:00 A.M. Before that conference each party shall deliver to the Court a two page statement of contentions. All discovery must be completed timely.

So Ordered.

Dated:

January 7, 2008  
Albany, New York

  
Joseph C. Teresi, J.S.C.

**PAPERS CONSIDERED:**

1. Order to Show Cause dated October 9, 2007 with Attached Affidavit of Donna A. Baeckmann dated September 28, 2007 with Attached Plaintiff's Statement of Net Worth, Exhibits A - F.
2. Notice of Cross-Motion dated November 6, 2007 with Attached Affidavit of the Defendant dated November 6, 2007 with Attached Exhibits A - M.
3. Affirmation of Robert White, Esq. dated December 19, 2007.