

ER Doctor's Temporary Loss of Custody and a Possible Path Forward



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Christian Lapham

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Christian M. Lapham
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In a stunning decision in the 11th Judicial Circuit last week, emergency room doctor Theresa Greene lost temporary custody of her 4-year-old daughter solely because of her profession and potential risk of exposure to COVID-19. Judge Bernard Shapiro suspended Dr. Greene's 50/50 custodial rights based upon the virus outbreak, despite Dr. Greene's assurances she has repeatedly worn protective equipment and has tested negative for the virus.

The Miami Third District Court of Appeals temporarily stayed the decision, but the initial decision has nonetheless set off a national debate on the issue of the custodial rights of healthcare workers fighting an extremely lethal and potentially contagious infectious disease.

While this case was not in Virginia, it may be helpful to think about impact on custodial decisions here as we are all facing similar unknowns with the onset of this virus. The Virginia court considers several factors in determining what is in the best interests of a child for custody and visitation purposes.

Factors 1 and 2 apply directly to this issue: the age, physical and mental condition of the child (1), and the age, physical and mental condition of the parents (2). The argument made in Dr. Greene's case is that the *potential threat* of the child's coronavirus exposure was enough to justify a complete suspension of Dr. Greene's custodial rights. The evidence, however, indicated that Dr. Greene had been diligently taking precautions and repeatedly tested negative for COVID-19. In other words, she had done everything she could do as a healthcare worker, and more importantly, as a mother, to protect her daughter. Her mere choice to be an emergency room doctor during this crisis, Judge Shapiro apparently believed, disqualified her from seeing her daughter. In the opinion of this author, it was fueled by speculation rather than facts, and a judge should never speculate.

More importantly, it does not align with good public policy. As Dr. Greene told CNN, "I think it's not fair, it's cruel to ask me to choose between my child and the oath I took as a physician." And she is correct. With over 18 million healthcare workers, many of whom have children, and a divorce rate over 50%, this decision could have negative implications for millions of single healthcare workers. Many of them may be forced to choose between their own children and the implications this has in their custody case over their oath as a nurse or physician. With medical resources already at the brink, such a decision could severely impact our nation's ability to battle the spread of COVID-19.

ER Doctor's Temporary Loss of Custody and a Possible Path Forward (Cont.)

Some years ago, the Virginia Military Parents Equal Protection Act (20-124.7-10) was passed to ensure that the custodial rights of military parents were protected even when they would be deployed. The legislature recognized that the nation's defense and military interests required that the individual servicemember need not choose between his or her child and the oath he or she took to serve this country. Considering this decision by Judge Shapiro and countless more to come, the General Assembly and other state's legislatures may need to step in and protect our nation's healthcare workers in a similar way that Virginia has protected its servicemembers. Otherwise, judges will continue to face this terrible choice.

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