

**BAKER v. BAKER** was a 1997 Tennessee appellate court decision. Paul David Baker and Patricia Baker were married on April 8, 1980, and they had a son and two younger daughters. In 1991, Patricia Baker divorced Paul David Baker, and she was awarded custody; with Paul David Baker receiving specific visitation rights.

Prior to the divorce, Patricia Baker and the minor children attended services at East Maryville Baptist Church. As the custodial parent, Patricia Baker exercised her right to provide for the children's religious education by continuing to attend East Maryville Baptist Church. There, the children were actively involved with many youth-related programs, including youth rallies and retreats.

In July 1995, Paul David Baker began to study the Jehovah's Witness religion during weekly study sessions held at his home. In December 1995, he began to regularly attend services at the local Kingdom Hall of Jehovah's Witnesses. Around September or October of 1995, he introduced the three minor children to the WatchTower religion by scheduling his weekly in-home study sessions during the children's visitation. Paul David Baker's instructor was a local Elder of the Jehovah's Witnesses named Charles Tillett. Tillett and Baker quickly included the three children in their studies. Tillett and Baker criticized the children's Baptist faith and taught the children that Jehovah's Witnesses were the only true religion and the only way to God. Paul David Baker refused to take the children to activities or services at the East Maryville Baptist Church. Additionally, per WatchTower teachings, Paul David Baker also began discouraging the children's participation in some school and community activities because he believed that the children should not participate in worldly activities.

As custodial parent, Patricia Baker requested that Paul David Baker stop teaching their three children the WatchTower religion, but he ignored her instructions - forcing her to obtain a temporary restraining order in February 1996 prohibiting Paul David Baker from discussing the Jehovah's Witness religion with the children. In 1996, there were a series of hearings after Paul David Baker contested the restraining order and filed for additional

visitation.

Patricia Baker testified that after the children began the Jehovah's Witness weekly studies they became withdrawn and moody. The children's attitudes and personalities changed in a negative manner. Patricia Baker experienced increased difficulties in disciplining the children. Amanda, the middle child, began suffering from significant stomach problems and would become physically sick. The stomach aches would begin right before the children went to Paul David Baker's house for weekend visitation. Patricia Baker also testified that Amanda would usually have stomach aches for a day or two after coming home from Paul David Baker's weekend visitations.

Chris Edmonds, the Associate Pastor of the East Maryville Baptist Church, testified that the children were concerned with being torn between the religious beliefs of their parents. Amanda had come to Mr. Edmonds several times asking him to pray for her about this issue in her life. Mr. Edmonds testified that all of the children's attitudes had changed but that the oldest child, Dustin, had undergone the most drastic change, often being confused and depressed.

Patricia Baker sent the children to meet with Lisa Davis, a licensed clinical social worker. Ms. Davis' report, introduced into evidence at trial, acknowledged that the children were experiencing genuine conflicts. She stated that the children told her that Mr. Baker and Mr. Tillett attempted to convince them that the Jehovah's Witness religion is the only true way to God. Ms. Davis reported that the children felt they would experience negative repercussions if they tried to express their true feelings to their father. Amanda, the middle child, also told Ms. Davis that she felt coerced into her involvement with the Jehovah's Witness religion.

Charles Tillett, the Jehovah's Witness Elder, testified in Paul David Baker's behalf that he had not observed any confusion or depression from the children. Dr. Carol Walton, a psychologist who evaluated the children on behalf of Paul David Baker, testified that the religious differences were not the source of the children's stress, but

that the parents' conflict about their religious differences was the source of the children's anxiety. However, Dr. Walton acknowledged during cross-examination that she had not questioned the children about the Jehovah's Witness religion.

The Trial Court found that there is "no question that the parties' children have been affected by the conflict between their parents." However, the trial court refused to assess blame. The Court applied the test that when there is a conflict between the parents of minor children with regard to

their religious training and influences, the rights of the custodial parent shall prevail. Applying that test, the trial court ordered:

1. Patricia Sue Baker Sanders has the primary right to determine the religious faith the children are exposed to, influenced by, and educated with.

2. Paul Baker is specifically prohibited from taking the children to any religious services conducted by the Jehovah's Witnesses. This prohibition shall also include any home bible studies conducted by him or any other member of that congregation. However, Paul Baker is not prohibited from discussing his religion with the children, if the children make legitimate inquiries about the same.

3. Paul Baker shall be prohibited from criticizing the Baptist religious faith and from attempting to undermine the children's religious training received from the custodial mother.

Paul David Baker appealed contending that the Trial Court violated his First Amendment and Tennessee Constitutional protections of free exercise of religion. The appellate court affirmed the lower court's order, but disagreed with the legal basis. This appellate court reasoned:

"Although individuals possess a Constitutional right to the freedom of religion, these rights can be overbalanced by interests of the highest order by the several states. ... The protection of its children is of the utmost importance to states. In visitation cases, the welfare and best interests of the child are the paramount considerations. ... Additionally, courts must also balance the rights of the parents whenever making decisions that will affect the parent/child

**relationship. However, when the parents remain at odds regarding the children's religious upbringing, the best interests of the child may require some limitations on the rights of either or both of the parents. ...**

**"In cases involving religious disputes between divorced parents, courts must maintain strict neutrality. ... This neutrality reflects the importance of both parents' religious beliefs. The law tolerates and even encourages, to a point, divorced parents to expose their children to their religious influences, even if divided in their faiths. ... Therefore, a court shall not prefer one parent's religion over another unless the children's health and well being are threatened by one of the parent's religious practices and beliefs. ...**

**"The majority of courts decline to interfere in religious disputes between divorced parents. However, courts can intervene when a non-custodial parent exposes his or her religious beliefs to minor children upon a clear and affirmative showing that these activities and expressions of belief are harmful to the children. ... The parent that moves to restrict the other parent's right to expose the children to a different religion shall bear the burden of showing clear and affirmative harm.**

**"The harm to the children resulting from exposure to their parents' conflicting religions must be demonstrated in detail and not simply surmised or assumed. ... A court should consider several factors to determine whether the children's welfare has been adversely affected. Corroborated testimony should be provided as to the children's general demeanor, attitude, health, school work, appetite, or outlook resulting from the alleged religious conflict. ... In support of the alleged harm resulting from the religious conflict, corroborating testimony should be heard from church, school, medical or psychiatric authorities, or any of the children's associates, whether in or out of school. ...**

**"... In the present case, two expert reports, one from a psychologist and the other from a licensed clinical social worker, were presented as well as the testimony of several individuals, family, friends, a psychologist, and clergy, regarding the resulting affects**

from the children's exposure to Mr. Baker's religion. The Trial Court held that the conflict between the parents affected the children. Although the Court held that the testimony conflicted somewhat, it nonetheless reached the conclusion that the children were affected by the conflict resulting from exposure to Mr. Baker's religion. The Court based its holding on facts such as Amanda's stomach problems, changes in the children's attitudes, and difficulties in disciplining the children. These facts are sufficient to support a clear and affirmative showing that the conflict resulting from exposure to Mr. Baker's religion is harmful to the children. We decline to require that the children of this state be harmed more than in the present case to satisfy the clear and affirmative harm standard.

"Upon a clear and affirmative finding of harm, a court can issue an order that limits the rights of parents to expose the minor children to their religious beliefs and practices. Courts should devise visitation orders, to the extent possible, that interferes with the parent/child relationship as little as possible. ... The Trial Court prohibited Mr. Baker from taking the children to any Jehovah's Witness religious services or home Bible studies. However, we find that this order adequately protects the children while still allowing Mr. Baker the opportunity to introduce the children to his religion if the children show an interest. The provision allowing Mr. Baker to discuss his religion upon legitimate inquiries sufficiently protects Mr. Baker's freedom of religion under both the United States and Tennessee Constitutions.

"As also already noted, Mr. Tillett, an elder in the Jehovah's Witness religion, testified that the children did not have to be converted to the Jehovah's Witness religion for Mr. Baker to attain salvation. Therefore, Mr. Baker can fully practice his religion in a manner to attain salvation to the extent that he does so outside the presence of the children, unless the children make legitimate inquiries about the religion. The Trial Court's order only slightly impinges Mr. Baker's freedom to practice his religion under the United States and the Tennessee Constitutions. This limitation is more than substantially supported by the state's utmost interest in protecting children.

**"While the Trial Court ordered Mr. Baker not to expose the minor children to the Jehovah's Witness religion, unless the children make legitimate inquiries, the Court did not specify the religion, if any, to which the children may be exposed. The Court only ordered that "[Ms.] Baker has the primary right to determine the religious faith the children are exposed to, influenced by, and educated with." By refusing to prefer a specific religion over another, the Trial Court successfully evaded an entanglement between church and state.**

**...**

**"The Trial Court does not mandate that the children be raised in the Baptist faith. Neither does the Court's order prevent the children from converting to the Jehovah's Witness faith if they so choose. The Court crafted its order only to remove the conflict in question and its resulting injury to the children. In fact, the Court wisely and specifically allows Mr. Baker the opportunity to share his religion with his children if they so inquire.**

**"We hold that the Trial Court properly crafted its visitation order. Ms. Baker can determine the minor children's religious training without violating their constitutional rights. However, children sometimes choose to follow a different religion than their parents. They must have the freedom to follow their religion of choice if different from either of their parents' religion. The Trial Court's order properly allows the children freedom to make religious decisions based upon their personal conscience while protecting the children from their parents' religious conflicts.**

**"Allowing the children the right to ask about their father's religion properly protects the children's First Amendment constitutional rights. The Trial Court's order properly protects the children from the religious dispute between the parents while allowing the children to make religious determinations for themselves**