

**BENTLEY v. BENTLEY** was a 1982 New York appellate court decision. Jeffrey Bentley and Margaret Bentley were married in December 1970. The parties separated in October 1977, and were divorced on August 17, 1978, in an action in which Margaret Bentley was the plaintiff.

Margaret Bentley was awarded custody of the two minor children, with Jeffrey Bentley receiving reasonable rights of visitation. Visitation has been amended at various times by agreement of the parties. The most recent order, dated January 15, 1980, established specific and detailed visitation rights and privileges. Since their divorce in 1978, the parties have returned to court on various occasions as a result of their continuing disagreements over various aspects of their relationship. In this matter, Jeffrey Bentley alleged that Margaret Bentley willfully denied him the visitation rights established by the order of January 15, 1980. Margaret Bentley denied having violated the provisions of the visitation order, and asserted that Jeffrey Bentley had used the period of visitation to afford him an opportunity to instruct the children in the Jehovah's Witnesses beliefs and dogma and to involve them in Kingdom Hall activities contrary to her wishes and to the general well-being of the children and their best interests.

At the time of marriage in 1970, both parties were of the Catholic faith. However, at some unspecified point in the marriage prior to the divorce, Jeffrey Bentley joined the Jehovah's Witnesses. Margaret Bentley subsequently halfheartedly joined her husband in observing the same religion, although she did not regularly attend the Kingdom Hall. [They probably joined just prior to October 1975, which was the "date de jour" which the WatchTower Society was predicting for Armageddon to occur. From 1966 (when prediction was initially began) until 1975, the Jehovah's Witnesses doubled in numbers.] Jeffrey Bentley remarried a Jehovah's Witness in October 1980.

The two young children did not want to participate in the Jehovah's Witnesses beliefs and practices. They did not want to engage in bible studies at the father's local Kingdom Hall, nor attend the religious conventions or assemblies of the Jehovah's Witnesses. They were being reared by Margaret Bentley in the Catholic faith. She and the children actively participated in and attended religious

**services together on a regular basis and the children received and accepted training in the church school.**

**In December 1980, the trial court ruled that there had been no violation by Margaret Bentley of either the terms or intent of its visitation order of January 15, 1980, stating in part:**

**"Jeffrey B. has inferred that this court lacks the jurisdiction to interfere with his rights as a father to direct his children's religious education and training and it would invade his constitutional rights contrary to the freedom of religion and separation of church and State clauses of the Federal and New York State Constitutions if the court does so.**

**"Having the custodial parent determine the religious upbringing of a child is necessary in order to limit the conflict and trauma on said child. In the present matter, these children are emotionally strained and torn as a result of the conflict of religious beliefs of their parents. It has been difficult for the children to reconcile the teachings of the Catholic Church with that of the Jehovah's Witnesses. The best interests of these children dictate that they be subject to being reared in only one religion. Since the parents are unable to agree on the subject, this court must make a determination which is in the children's best interest. As they grow and develop they may do as did their father and change their choice of religion or choose none at all, but it is clearly evident from the proof herein, they are being emotionally and physically strained as a result of the conflict of their parents' religious beliefs.**

**...**

**"... In light of the strained relationship between the parties as evidenced by the many proceedings in this and other courts and the decision in this proceeding, the order of this court of January 15, 1980 shall be and hereby is modified and amended by adding the following decretal provision: 'Ordered, that said respondent/father shall refrain from instructing said children in the teachings of the Jehovah's Witnesses and shall also refrain from taking said children to any assemblies, meetings, conventions, religious services or other social or religious activities of the Jehovah's**

**Witnesses during his periods of custodial visitation."**

**On appeal, Jeffrey Bentley contended that the trial court erred in denying him the right to instruct his children in his religion and that, under the circumstances, it should have remained neutral. He further contended that the Family Court's "intrusion" violated his First Amendment right to the free exercise of his religion.**

**The NY appellate court disagreed, stating in part:**

**"The Family Court's order should be affirmed. As a general rule, it is the custodial parent who is the appropriate person for determining the religious upbringing of the children. We conclude that the court would be intruding on petitioner's First Amendment rights were it to enjoin the noncustodial parent from discussing religion with his child absent a showing that the child will thereby be harmed. In the instant matter, the record amply supports the court's finding that the children were being 'harmed' by [Jeffrey Bentley's] actions in instructing and involving them in the teachings of the Jehovah's Witnesses. The 'best interests' of the children is the threshold consideration in a custody proceeding ... . The Family Court was well within its broad discretionary power in reaching its determination that the best interests of these children dictate that they be reared in only one religion. We find also without merit [Jeffrey Bentley's] contention that he was denied due process by the Family Court's refusal to allow cross-examination of the Law Guardian concerning his interviews with the two children. ... the interviews are privileged since the relationship of the Law Guardian and the children is one of "attorney-client" and, as such, is not subject to cross-examination. Order affirmed"**