

HAM v. CAVETTE was a 1962 Texas appellate court decision. Claudie A. Ham and Karlita Cavette Ham were married in June 1951, and divorced in July 1957. Custody of their two children, Kathy, who was born November in 1953, and Claudie Allin, Jr., who was born in 1954, was awarded to Karlita Ham. Karlita Ham died in March 1958. In April 1958, Claudie A. Ham, who had remarried, petitioned the court for custody of his two children. The hearing was held in June 1958.

Ham admitted at the trial that prior to being divorced by Karlita, he lived a wild and dissolute life, associating with gamblers and prostitutes, entertaining in night clubs and beer joints in many places, and working only periodically without any steady employment for any length of time, except for several years as an entertainer at the Imperial Club in Galveston. Appellant admitted that he had been arrested on certain charges involving morals but had not been prosecuted or convicted. He admitted other derelictions and improper conduct.

However, Ham asserted that a week before the trial he had been converted to the Jehovah's Witnesses. ham claimed that the Jehovah's Witnesses would not permit him to return to the entertainment field. Ham stated that although he had previously believed what the WatchTower Society taught, it was only a week before the trial that he had been baptized, and had changed his manner of life. He no longer gambled, smoked or drank.

In December 1958, the court awarded temporary custody of Ham's two children to Karlita's mother and step-father, Ernest E. Cavette and Elizabeth Cavette, who had had custody of the children since Karlita died, and who had cared for the children for much of the time prior to Karlita's death.

In December 1959, Claudie Ham again petitioned for custody, but in August 1961, judgment was entered giving custody of the children to the Cavettes. Claudie Ham appealed.

The December 1958 order permitted Ham to visit the children each Sunday afternoon. There was testimony to the effect that when the children returned from such visits with their father, they were highly nervous and upset, had

nightmares and frequently vomited. The testimony also indicates that the children did not want to go with their father and preferred staying home with the Cavettes. Although both Cavettes were employed, they had a maid to look after the children when both were at work. The children had been baptized in the Catholic church in accordance with the desire of their mother expressed shortly before her death, and at the time of the trial Kathy was in the first grade and Claudie in kindergarten at Sacred Heart School. The Cavettes denied that they were doing anything to alienate the affections of the children for their father, although Mrs. Cavette admitted that at one time she had told the children that their mother's death was caused from the treatment their father gave her.

Two employees from the State Department of Public Welfare had testified in 1958 to the effect that the children were not ready for the gruesome WatchTower Society explanations of life apparently expounded by their father during the times that he had them with him. They recommended that the children be left with the Cavettes, with the right of reasonable and controlled visitation by the father in the Cavette's home, at least until the end of the school term and then that they be permitted to spend the summer with their father with the Cavette's having the right to see them.

There was much testimony to the effect that the Cavettes were suitable and proper persons to have custody of the children; that they were financially capable of taking care of them and rearing them in a proper manner, and that their home was a suitable one in which to rear such children. There was also much testimony to the effect that the visitations of the children with their father resulted in their becoming highly nervous and manifesting ill effects, and that the father possessed no financial security.

On appeal, it was Ham's contention that since the trial court did not expressly find that he was an unfit person to have the custody and control of said children, he was entitled to their custody as a matter of law since he was their father and natural guardian.

The appellate court affirmed the trial court decision that it

was in the best interest of Ham's two children that their custody be continued and vested in the Cavettes, stating in part: "Since no express findings and conclusions of law were filed by the [trial] court, we are required to review the evidence in the light most favorable to appellees, the prevailing parties. ... In so doing we have concluded that there is in the record evidence sufficient to rebut such presumption and to support the court's findings expressed in his decree that it is in the best interest of said minors that their custody be continued and vested in appellees and not in appellant."