HAMILTON v. HAMILTON was a 2002 Alaska Supreme Court decision. John Hamilton and Phyllis Hamilton began dating in 1990; moved in together in late spring 1991; and had their first son in June 1991. They married in November 1991. In April 1993, a second son was born. Phyllis Hamilton started rearing their two sons as Jehovah's Witnesses in 1995. The marital relationship deteriorated, and in May 1997, John moved out and filed for divorce. Phyllis Hamilton moved with the boys from Petersburg to Juneau, where she obtained a job with state government. The decree of divorce was entered on March 25, 1999.

John Hamilton and Phyllis Hamilton were given joint legal custody of the children, with primary physical custody in Phyllis. John was given visitation during Thanksgiving, winter holiday, spring break, and summer vacation. In addition, John was given "visitation rights if he is in Juneau, provided it is reasonable and does not interfere with pre-planned activities or school attendance, and may have the boys travel to visit him in Petersburg for up to five weekends during the school year, at his expense." The agreement also gave each parent the right to make decisions regarding day-to-day care and control of the children when the children are residing with that parent, but major decisions regarding education, medical care, and socialization were to be made jointly. John and Phyllis agreed to a "good faith requirement" to use their best efforts to comply with statements of principle relating to their parenting rights and responsibilities, including working together on providing a sound moral, socioeconomic, and educational environment for the children; promoting the relationship between the children and the other parent; and supporting the other parent's lifestyle in front of the children.

The two boys first attended Glacier Valley and later Harborview Elementary Schools in Juneau. After visiting the staff and teachers at Glacier Valley, John claimed that Phyllis called to scream at him about turning the teachers against her. Soon after, Phyllis transferred the boys to Harborview. John Hamilton claimed that the reason Phyllis gave for transferring the children was because he had turned the teachers against Phyllis and, as a result, Glacier Valley was a bad environment for the children. When John Hamilton tried to visit Harborview, he reported a very hostile attitude from the receptionist and office workers. He

further reported that Phyllis had not listed him in the boys' paperwork on record at the schools. John had to pry information about Frank's and Ian's progress from three different school administrators.

Later, the custody investigator spoke with the boys' teachers at both schools, as well as both principals. The investigator's report states that Phyllis told the staff at Glacier Valley not to inform John about any concerns they may have regarding the boys, and that they were to deal with her only. Phyllis's response at trial was that the custody investigator and staff at Glacier Valley and Harborview were lying. The custody investigator also found that staff and teachers at Glacier Valley had difficulty working with Phyllis. They found her to be in denial about problems the boys were facing, and that she avoided dealing with concerns by blaming others.

While there was nothing mentioned in the custody agreement requiring the custodial parent (Phyllis) to share school information, John and Phyllis were to consult with one another on substantial questions relating to educational programs. They were also to exert "their best efforts to work cooperatively in future plans consistent with the best interests of the children ... ." The trial court later ruled that Phyllis had breached this part of their custody agreement.

In October 1999, John Hamilton filed a motion and memorandum to enforce visitation and for sanctions against Phyllis Hamilton. John claimed that Phyllis had twice violated the child custody agreement by not allowing him to visit the boys when he was in Juneau on business. In his affidavit, John stated that Phyllis had hung up on him when he had called to arrange visitation for times he would be in Juneau on business. Phyllis did call him back soon afterward but no plans for visitation were agreed to. He then wrote a formal letter and had it served on her at work by a process server. When no plans were reached, John went to the Juneau Police Department, and filed a custodial interference report, and had an officer accompany him to her house.

Phyllis requested a continuance from the court to respond to John's motion. Phyllis thereafter move out-of-state with the children to Tacoma, Washington. The trial court later ruled that her move from Juneau was for the purpose of thwarting John's access to the children. Judge Thompson's order stated that Phyllis's move was "the final straw", and

he ruled that Phyllis had absconded from Juneau to Tacoma, Washington with the children without any notice whatever to John. The judge noted: "Defendant's testimony that this move was simply a visit which she later determined to become permanent, and/or that it was done on the spur of the moment is frankly incredible." As further proof, Judge Thompson mentioned that within hours of leaving her job, Phyllis had loaded two automobiles on the barge for Washington. Judge Thompson found that Phyllis had thought of the move in advance and did not inform John of her plans. John affirmed that he was not told of the impending move to Washington. He also stated that Ian had told him that their belongings were on the barge south when John first spoke with Ian after his arrival in Washington. In one of her affidavits, Phyllis stated that when she, Francis, and Ian left the Juneau apartment for the final time, just prior to leaving for Washington, the apartment was empty of their belongings. She also stated that when she spoke to John after arriving in Washington, she wasn't sure where in Tacoma she was going to live. Phyllis told the trial court that the day she quit her job she put two cars, loaded with her belongings, on a barge headed for Tacoma. Additionally, the custody investigator reported that Harborview's principal indicated that the boys were aware of the move a couple of weeks prior to their departure. Principal Dye stated that Ian let it slip in school but said he wasn't supposed to tell anyone.

On appeal, Phyllis argued, in part, that the move to Tacoma was due to the need for "family support" (Phyllis evidently was originally from Tacoma), plus the boys "cultural needs" would best be met in Tacoma, where her bi-racial children would be exposed to the African-American culture through their schooling and her African-American family.

The trial court issued the order granting John's motion to modify custody in July 2000. Judge Thompson stated that the factor regarding "the desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent" was the most important factor in reaching his decision. Phyllis and John continue to share legal custody, but primary physical custody was switched from Phyllis to John. Phyllis was given liberal visitation during summer vacation, on alternating winter holiday and spring break vacations, etc.

Phyllis appealed. The Supreme Court affirmed, stating in

part:
"Phyllis has raised the boys as Jehovah's Witnesses since 1995. John has expressed a great deal of hostility towards this religion and the effect it is having on the boys. He has expressed a desire to allow the boys to make up their own minds as to religion when they are old enough to fully understand it. Despite his past hostility towards Phyllis's choice of religious beliefs, John stated during his testimony that he would not stand in the children's way if they choose to practice Phyllis's religion. He expressed a tolerance for the children's reading, study, and discussion of the religion with people who are knowledgeable and interested in it.

"Phyllis claims that the trial court did not account for John's intolerance toward the boys' religious beliefs as Jehovah's Witnesses. She claims that placing the children, especially Francis who has begun to internalize a religious belief system, into a home where such beliefs are not respected is a factor the trial court should have given more consideration.

"Although a court may not rely on the religious affiliations of the parties in making a best interests determination, the religious needs of a child are a factor the court can consider. The court must make a finding that the child has actual religious needs and that one parent can better satisfy those needs. In deciding actual religious needs, we determine whether a child is "mature enough to make a choice between a form of religion or the lack of it." In Bonjour v. Bonjour, while noting that the maturity of a minor will vary from case to case, we commented favorably on one court's holding that "children aged three, five, and seven are not of sufficient maturity to form an intelligent opinion on so complex a subject as religion or their needs with respect to it." In that case we went on to consider the kinds of determinations a trial court may need to make when a fifteen-year old child has developed either strong religious or anti-religious beliefs. As Francis and Ian are nine and seven, respectively, they are not yet mature enough to make a choice between a form of religion or the lack of it.
"In spite of John's admitted instances of previous intolerance, Judge Thompson found his tolerance expressed at trial to be believable. As such, the court found

that the religious aspects of the first two factors in determining the best interests of the children favored neither John nor Phyllis. Because the children lacked the maturity needed to present an actual religious belief, the trial court was not required to give further consideration to the boys' religious needs beyond its belief in John's tolerance. Furthermore, the trial court expressly stated in the order that should John's tolerance wane and should he begin to 'affirmatively attempt to ridicule or undermine [Phyllis's] religious beliefs to the children, this factor could become more important.'

... ...

"We perceive no error pertaining to the children's cultural needs. As noted, the trial court did not explicitly consider the cultural needs of the boys because there was no evidence presented to the trial court upon which such a determination could be made. And Phyllis will have custody of the boys during the three month summer vacation as well as other various school vacations, ... The trial court knew that John was aware of the possible problem. Finally, the boys were being placed into a multiracial home [Footnote: John's girlfriend, Jennifer Valentine, is Vietnamese and has a son, James, whose ethnicity and race do not appear in the record. As the children will be living in a home with John, Jennifer, and James, they will be exposed to a variety of cultures and races. Rather than not seeing anyone who looks like them, as Phyllis fears, they will see a home where no one looks the same as anyone else.] All of these circumstances lead us to conclude that the trial court did not abuse its discretion in not explicitly addressing the children's cultural needs.