

**POOLE v. POOLE** was a 2003 Wisconsin appellate court decision. David Poole had been reared as a Jehovah's Witness, but he had left the religion after graduating from high school. During the course of their marriage, David, Lisa, and their son Brian celebrated Christian holidays such as Easter and Christmas, but the family did not attend religious services or belong to any religious organizations. After the divorce proceeding had begun, David Poole began attending meetings of the Jehovah's Witnesses. He also started taking Brian with him. By the time of the divorce hearing, Brian was spending between five and ten hours a week at Jehovah's Witness meetings and (recruiting?) activities during his placement with his father.

Lisa Poole's objected to such, and also complained that David was taking Brian to Jehovah's Witness meetings during Lisa's physical placement times. At trial, Lisa testified that she felt Brian's involvement with the Witnesses was destructive and isolating, and that she would like to expose him to alternative religious viewpoints. She was particularly concerned that the Jehovah's Witnesses discouraged associating with "worldly people," i.e., non-Witnesses; discouraged extracurricular activities and education beyond high school; discouraged celebration of birthdays and holidays that Brian had previously enjoyed celebrating; and the JWs preached the imminent destruction of the world -- such that Brian began living in daily fear. Lisa's opinions were supported in part by the testimony of a "cults expert". The trial court permitted the expert to give his opinions as to why the Jehovah's Witnesses were a "potentially unsafe and destructive religious organization." In the course of giving its decision from the bench, however, the trial judge characterized the expert's testimony as "insulting", and stated that he "refused to write off Jehovah's Witnesses as a cult or even a dangerous organization."

The guardian ad litem testified that Brian had expressed the wish to participate in the Jehovah's Witness religion, but the guardian also questioned how voluntary that decision really was, given David Poole's pride in his emphasis on adherence to the Watchtower lifestyle, and given Brian's desire to please his father. The guardian ad litem recommended giving religious decision-making authority to Lisa Poole on the grounds that Brian should not face the pressure of changing religions and altering activities, and

that Lisa would give him a broader religious perspective. The trial court ultimately agreed with the guardian ad litem that giving Lisa religious decision-making authority would be in Brian's best interest, citing concern that David appeared to measure Brian's development as a person solely on Brian's adherence to WatchTower teachings, and that Brian was so motivated to please his father that his supposed decision to follow WatchTower teachings was, in reality, not truly voluntary.

On appeal, the appellate court affirmed the lower court's ruling, stating in part:

"... Lange explicitly held that no showing of harm was required before a trial court could fashion restrictions to protect a sole custodial parent's right to chose the child's religion from proselytizing efforts from the non-custodial parent.

"When parents sharing joint legal custody are unable to agree as to a course of religious upbringing for their child, [Wisconsin state law] authorizes the trial court to grant sole authority to direct the child's religious training to one parent and to correspondingly restrict the other parent's religious decision-making, without a showing that the other parent's religious choices would be potentially harmful to the child.

"... There is ample evidence to support the trial court's determination that there was an 'irreconcilable conflict' between the parties on the issue of religion, such that joint decision-making was unworkable. It was therefore entirely appropriate for the trial court in this case to assign religious decision-making to one parent or the other. The trial court took great care to note that the Jehovah's Witness religion was a 'well regarded religious institution' whose practitioners' 'sincere and heartfelt' beliefs were entitled to respect. The trial court did not base its decision on a comparison between the merits of Brian's and Lisa's religious beliefs. Rather, the trial court considered such factors as 'Brian's relationship to his father and his relationship to the religion and Brian's age and his ability to make decisions for himself.' The trial court reasonably explained that it believed it would be in Brian's best interest to give religious decision-making authority to Lisa, due to the pressure Brian felt to please his father by participating in the Witness religion. Contrary to David's allegations, we are not persuaded that the trial court's decision was improperly based on a negative view of the Witness faith.

... ..

**"David next contends that, even if an assignment of religious authority is permissible under the statutes without a finding of potential harm, the trial court's order violates his rights under the [Constitution]. Again, Lange contradicts David's claim. As the Lange court explained: '... the free exercise of religion includes the right to profess one's faith, but it does not include the right to engage in religious conduct such as proselytizing, that runs afoul of an otherwise valid law ...**

**'Limiting [the non-custodial parent's] religious conduct is not the object of the visitation restriction. It is the incidental effect of securing [the custodial parent's] right under a valid law, the custody statute, to chose the children's religion.'**

**"... In other words, what is at issue here is not David's right to exercise his own religious beliefs, but his authority to direct the religious upbringing of his son. In accordance with Lange, we conclude that David's constitutional free exercise rights are not violated by an order which necessarily divides and assigns religious decision-making authority to one of two parents who cannot agree on a course of religious upbringing for their child.**

...

**"David also maintains that the custody modification order violates his rights to free speech and association, because it is not narrowly tailored to protect Lisa's right to direct Brian's religious upbringing. Specifically, he claims that Lisa 'offers no formal religious training or affiliation for Brian. So there is nothing for [David]'s religious exposure to contradict.' First of all, David's claim ignores Lisa's testimony that Brian refused to attend Unitarian services with Lisa after going to Witness meetings with his father. Thus, there was evidence in the record that David was impeding Lisa's ability to direct Brian's religious upbringing by encouraging Brian to follow only the Witness faith. Moreover, the fact that Lisa may have chosen a less formal or non-formal course of religious upbringing for Brian does not mean that her choice is somehow less protected.**

**"David makes similar claims that Brian's rights to religious freedom, free speech and freedom of association are**

**violated by the custody modification order. He has not, however, provided any authority which persuades us that a minor has the right to exercise any of these constitutional rights in contravention of his or her parent's wishes. We are more convinced by the trial court's analogy to educational and medical decisions which a parent has the right to make on a child's behalf. In any event, the trial court clarified at a post-decision hearing that its order would not bar Brian from doing things like socializing with Witness friends, praying, reading Witness literature on his own or asking his Dad or grandparents about Witnesses, so long as not directed to do so by his father. We do not consider the order here any more restrictive to Brian's ability to form his own religious beliefs than that of any other child subject to his or her parents' direction."**