

S.E.L. v. James W. was a 1989 New York decision. James W. and SEL were divorced in March 1987. SEL was awarded custody of their daughter Natalie; with James W. awarded visitation rights. SEL quickly objected to the extent to which James W. involved Natalie with Jehovah's Witness doctrine, religious services, activities and teachings. In November 1987, James W., represented by WatchTower Society attorney Carolyn Wah, petitioned for custody. The court ruled:

"J.W.'s petition for modification of custody, brought less than a year had elapsed since the judgment of divorce, is a thinly disguised ploy to obtain leverage with respect to his demands for visitation. Since his petition is utterly lacking in merit it is dismissed.

"We next turn to a consideration of not only the amount of visitation that should be awarded J.W., but also what restrictions, if any, should be placed upon his ability to expose his daughter to his religion.

"We shall do so by focusing on the following issues: (1) What are the rights and responsibilities of the custodial parent with respect to a child's religious training? (2) To what extent are those rights and responsibilities abridged by a noncustodial parent's First Amendment right to the free exercise of his or her religion when enjoying visitation with his or her child?

"The court will attempt to resolve these salutary, and off-times conflicting objectives in the context of the best interests of the child."

...

"New York law has consistently held that the custodial parent has the right to determine a child's religious upbringing and training. ...

... ..

"The right to free exercise of religion guarantees that a court will not make, inter alia, a custody decision, based on its view of the respective merits of two religions. It further guarantees that a noncustodial parent's right to practice his or her religion will not be abrogated when the child visits

except to the extent necessary to prevent any harm to the child.

...

"In Matter of Bentley v Bentley ... The Family Court had determined that the custodial parent was the proper regulator of the child's religion, that the court would not generally interfere unless mandated by a clear need to protect a child, that the child's best interest dictated that the child be reared in one religion, and absent agreement that determination must be left to the custodial parent.

"The Appellate Division noted that the Family Court's order prohibiting a Jehovah's Witness father from instructing the child in Jehovah's Witness teaching, and taking him to Jehovah's Witness religious and social activities was proper because there had been demonstrated harm to the child. It noted that it would be improper in the absence of such demonstrated harm.

"The harm found to exist emanated from the children being emotionally strained and torn because of the parties' conflicting religious beliefs, and not from any judicial evaluation of the relative merits of Jehovah's Witness doctrine, and that of the custodial parent's Catholic faith.

"The basis of this decision is grounded not in any assessment of the respective worth of Catholicism vis-a-vis Jehovah's Witness, but because the conflict which arose from differing religious beliefs had an adverse impact on the children, and the court wished to ameliorate it.

"The purpose of the prohibition was to avoid conflict which had rendered the children emotionally strained and torn, and not on any judicial denigration of the validity of Jehovah's Witnesses teachings. The only way that this harmful situation could be obviated was to allow the custodial parent to determine the religious upbringing.

"Bentley (supra) is the only case in New York which has focused on the interplay of the noncustodial parent's First Amendment rights, and those of the custodial parent to

determine the child's religion. It did not involve a separation agreement.

"... both dealt with separation agreements, and held that such agreements were entitled to enforcement by the courts. They further held that if a party wished to avoid or modify such an agreement he or she bore the burden of proving that enforcement would not be in the children's best interests.

"A synthesis of these holdings leads to the conclusion that J.W. has the burden of proving that denying him the right to expose Natalie to Jehovah's Witness training would not be in her best interests.

"That burden falls upon him because of the procedural posture in which the matter comes before this court. J.W. agreed in the stipulation of settlement, incorporated but not merged into the divorce judgment, that S.E.L. would have absolute custody and exclusive supervision, control and care of Natalie.

...

"Since J.W. now wishes to abrogate this agreement he bears the burden of showing that enforcing it will not be in Natalie's best interests.

"While the court is sensitive to J.W.'s First Amendment claim, the situation is further complicated because rights of constitutional dimension can be freely waived. When J.W. agreed S.E.L. should have 'exclusive supervision, control and care' of Natalie he waived his right to the 'free exercise' of his religion when Natalie visited with him. He assumed the onus of demonstrating that allowing him to expose Natalie to his religion would not be harmful to her.

"After considering the evidence the court concludes that J.W. will be permitted to take Natalie to Jehovah's Witness services on Sunday but shall not involve her any further except that he may answer casual questions which she might ask him. No other exposure to Jehovah's Witness doctrine and activities will be permitted because it has, and could lead to the kind of strain and conflict enjoined in

Bentley v Bentley (supra).

"The conclusion that any more extensive participation would be harmful to Natalie turned almost entirely on an evaluation of the parties' credibility.

"The court finds J.W. less than credible. This conclusion is based on observation of his demeanor, his denial to Dr. Dudley of the violent incidents toward S.E.L. which furnished her grounds for divorce because of his cruel and inhuman treatment, and Dr. Dudley's finding that J.W. was less credible than S.E.L.

"It is highly significant that although J.W. testified that he was amenable to Natalie being exposed to both faiths, Natalie revealed that he told her that he 'doesn't want her studying Catholicism, but wishes her to study what he's studying'.

"Dr. Dudley further noted that Natalie was placed under such strain by her parents' conflict (which centers around religion) that it inhibited her ability to talk to either of them.

"Finally, Dr. Dudley reported that subsequent to their meeting, Natalie called him twice. The first call, made from her mother's home, was for the purpose of reaffirming her position that she wished to study the religions of both her parents.

"The second call was made from J.W.'s home. She stated that she wished to study the Jehovah's Witness religion, and that the only way she could do this would be to move in with her father, and accept their faith.

"I find this an unmistakable indication of J.W.'s overreaching. It reinforced Natalie's interest in the Jehovah's Witness religion by taking advantage of her youth and lack of insight, by subjecting her to undue pressure.

"J.W.'s counsel (Carolyn Wah) has presented a resourceful well-written and comprehensive brief. Its thoroughgoing analysis of First Amendment principles has meager relevance to the factual context of this proceeding. The

court has little or no disagreement with the cases cited and the principles expounded; but they are generally inapposite. Although there is an exhaustive analysis of the law of other jurisdictions and Federal law, there is too little reliance on the common law of this State. This court, as a court of original jurisdiction, is bound to follow the precedents of the higher courts of this State. And to the extent that they compel results different than the cases, treatises and articles cited in the petitioner's brief, New York common law will control.

"Moreover, this proceeding involves an existing custody order which was based on the parties' agreement. The original determination in Rockland County Supreme Court was devoid of any consideration of the relative merits of the parties' religions. Nor has that issue been presented, let alone considered, in this forum.

"This decision is based on Natalie's best interests. It would have been the same if J.W. were the custodial parent. His right to bring up Natalie as a Jehovah's Witness would have been honored, and S.E.L. would have shouldered the burden of demonstrating that it would not be harmful to Natalie for her to be exposed to Catholicism.

... ..

"The right to free exercise of religion requires that a custody decision will not be made because a court has determined the respective merits of two religions. It further guarantees that no limitation will be placed on a noncustodial parent's right to practice his or her religion when the child visits except to the extent necessary to prevent any harm to the child.

"It is one thing to grant the custodial parent the right to determine Natalie's religion. It is quite another to allow her, in furtherance of that right, to prohibit any exposure to her father's faith.

"While S.E.L. has the right to determine Natalie's religion, that right does not permit her to enjoin the child from having the limited exposure to her father's religion permitted under this decision.