

**SALVAGGIO v. BARNETT** was a 1952 Texas appellate court decision. Lee Salvaggio and Betty James Barnett were divorced circa 1950. Lee Salvaggio was granted custody of their two year old daughter, because the trial court thought that such was in the best interests of the child. Lee Salvaggio was then living with his parents, who would care for the child while he was at work. Betty James Barnett was forced by the divorce to work long hours simply to make ends meet. No other "unfitness" about Barnett was found by the court.

Subsequently, both Salvaggio and Barnett had remarried. Salvaggio and his new wife had moved into their own home. Barnett and her new husband also had moved into their own home. Barnett had had a second child, and she was now a stay-at-home mom. Under these "changed circumstances", Barnett petitioned the court for custody of her daughter, Judy Suzzan Salvaggio. Barnett's petition was granted. That trial court stated, in part:

"During all the time Lee Salvaggio has had the custody of the child he has cared for her with kindness and attention, and has provided a home for the child and also has adequately provided for all her physical needs. Both Lee Salvaggio and his present wife are devoted to the child and have given it love and care. Lee Salvaggio has only the one child who lives with him and his wife in their own home separate and apart from that of Lee Salvaggio's parents. ...

"Lee Salvaggio is a fit and proper person to have the custody of his child except that he and his present wife, because of their belief that the Bible requires it, propose to teach Judy Suzzan Salvaggio that it is wrong to salute the American Flag, and that it is wrong to celebrate and exchange gifts at Christmas and that it is wrong to kill others even in defense of the United States. Lee Salvaggio did not formerly follow such beliefs and was in the late war during which time he was in several battles and saluted the flag.

"The Court is of the opinion that conditions affecting the welfare of Judy Suzzan Slavaggio since the rendition of the decree of divorce have materially changed so that it is now to the best interests of said child that her natural mother,

**Betty James Barnett, should have the custody of said child. (The father of said child, Lee Salvaggio, should have the right to visit said child.) ... The changes of condition affecting the welfare of such child include the change in the financial circumstances of Betty James Barnett and her ability to provide a suitable home for her child. However, in arriving at its conclusions, the Court is primarily influenced by the proposed teachings of Lee Salvaggio and his present wife with reference to saluting the flag, fighting in defense of the United States and celebration of Christmas. The Court judicially knows that the overwhelming majority of other children in this state and in the community where Judy Suzzan Salvaggio will reside and go to school will be taught to salute the American Flag, to defend the country against enemies, and will exchange gifts and celebrate Christmas. The Court concludes that such fact would produce problems and conflicts adversely affecting the welfare of such child. Without in any way infringing upon the right of Lee Salvaggio and his present wife to interpret the Bible as they see fit, the Court is of the opinion that as between the natural parents of such child, the best interests of the child would be served by her being placed in the custody of the parent who will rear her in the normal atmosphere of an American home."**

**Lee Salvaggio appealed, alleging in part that:**

**"1. That the court's order depriving appellant of the custody of his child is illegal in that the changed conditions relied upon by the court for ordering the change of the custody to appellee relate primarily to the adoption by appellant of certain religious beliefs disapproved of by the court as being harmful to the child.**

**"2. That the court's order is illegal in that it denies the father, having legal custody of his child, of the right to raise the child according to the tenets of his faith primarily because the court disapproves of the same as being bad for the child, contrary to the First and Fourteenth Amendments to the Constitution of the United States.**

**In response, this Texas appellate court stated, in part:**

**"In choosing between parents who are contending for the custody of the child, a magistrate has only such powers as**

**the law has conferred upon him to determine whose custody would best promote the interest and welfare of the child. Under the American principle of separation of Church and State, the secular power is so shackled and restrained by our fundamental law that it is beyond the power of a court, in awarding the custody of the child, to prefer, as tending to promote the interest of the child or surround it with a more normal atmosphere, the religious views or teachings of either parent. ... It is in no way contended that appellant's religious teachings to his child would be immoral or illegal, but merely that they would be unpopular.**

**"However, insofar as the court's order giving the custody to the mother is based on his discretion that a mother's care and attention for a young female child is for that child's best interest, the court's order finds ample legal support.**

**"The court committed no reversible error, and the judgment is ordered affirmed."**