

SMITH v. QUIGG was an extremely enlightening 2006 Ohio appellate court case. Gavin Izaak Smith and Christina Quigg, an unmarried couple, had a child named Izaak in April 1998. Smith was legally declared Izaak's father in December 1998. Smith filed for custody in January 1999, and Smith was declared the residential parent in October 1999. After Smith obtained custody of Izaak in 1999, the child resided at the home of Smith's parents, Gregory and Joyce Smith. Smith also had an older second child with whom he had visitation rights, and that second child also stayed with Gregory and Joyce Smith during such visitation. Smith did not always reside with his parents, but his two children always stayed with the Smiths, and were parented at least in part by them. Joyce Smith is a practicing Jehovah's Witness, and reared Gavin as a Jehovah's Witness, although he is currently "disfellowshipped" (excommunicated). Gregory Smith did not attend any church, but wanted Izaak to be reared as a Jehovah's Witness.

In February 2001, Christina Quigg was killed in an automobile accident. Christina's parents, Carla and Eugene Quigg, who were Methodists, were granted rights of companionship with Izaak in September 2001. On October 5, 2001, Smith denied the Quiggs their scheduled companionship. On October 10, 2001, the court allocated visitation rights to the Quiggs. Part of the order directed the Quiggs to comply with the wishes of Smith regarding the religious training for Izaak. Visitation with Izaak continued to be a source of conflict between the parties.

Jehovah's Witnesses do not celebrate birthdays, holidays, or political and national holidays. They do not say the pledge of allegiance, do not salute the flag, and do not honor other secular icons. Jehovah's Witnesses do not participate in competitive team sports. By contrast, the Quigg's Methodist church does not forbid those activities.

On January 2, 2002 and on August 22, 2002, the Quiggs filed a motion for contempt against Smith for denying their companionship rights. In the August 22 motion the Quiggs also moved for reallocation of companionship rights. On October 23, 2002, the court appointed a guardian ad litem for Izaak. On May 4, 2003 Dr. Jack Tarpey submitted his

report on the psychological evaluations he had done on the Quiggs and on Smith. Dr. Tarpey reported Izaak had no developmental difficulties and was age appropriate in his behavior and abilities. Dr. Tarpey reported he observed Izaak's interaction with Smith and there was no indication of avoidance. Dr. Tarpey also indicated he found nothing in his evaluation of the Quiggs to justify Smith's criticisms of them, but noted that Smith had a strong motivation to deny them a relationship with Izaak.

On May 13, 2003, the Smiths commenced a proceeding to adopt Izaak in Franklin County, Ohio. Smith consented to the adoption of his son by his parents. The Fairfield County Court, where all prior legal proceedings had occurred, was not notified of the adoption proceeding, nor were the Quiggs, nor the guardian ad litem. On July 3, 2003, the Franklin County Probate Court issued a final decree of adoption.

When the fraudulent adoption was disclosed to the Quiggs, they took legal action. The Franklin County Probate Court vacated the adoption decree on August 28, 2003, and transferred the adoption case to the Fairfield County Probate Court, which subsequently dismissed the adoption proceedings. On September 2, 2003, the Quiggs filed a motion for emergency custody of Izaak. The court granted the motion. On September 11, 2003, the Smiths filed a motion to intervene, which was also granted. At the hearing on the emergency custody order, the Smiths were awarded temporary custody of Izaak with the Quiggs receiving companionship rights. The court ordered the Smiths to submit to psychological testing by Dr. Tarpey. Conflict between Smith and the Quiggs continued, and in December of 2003, the Quiggs again filed for emergency custody. The court granted the emergency custody order, and at the subsequent hearing, the court continued temporary custody of Izaak with the Quiggs. The Smiths received companionship rights, but Smith was not given any specific companionship rights. The court found appellant had abandoned Izaak and indicated he had no interest in parenting him. The record indicated Smith's previous practice was to share parenting time and duties with the Smiths and the court found Smith could continue to visit with Izaak when he was at the Smiths' home.

The guardian ad litem reported Gavin Smith repeatedly lied about his religious observances and church attendance, and the report gives the distinct impression the guardian ad litem questioned the sincerity of appellant's beliefs. The lower court record indicated that both Gavin Smith and his mother Janice Smith participated in emotional and physical abuse of Izaak. After Izaak reported incidents of sexual abuse, ie inappropriate touching, by Joyce Smith, the Fairfield County Children's Services investigated but did not intervene. The guardian ad litem was extremely critical of Gavin Smith and the Smiths, and their own counselor testified they were inflexible and Joyce Smith is hot-headed.

The court awarded temporary custody of Izaak on September 16, 2003 to the Smiths on their assurance they would honor the court's visitation orders in the future. However, the record shows they did not do so. On December 18, 2003 the court again entered an emergency ex parte order awarding custody to the Quiggs, and continued it on January 5, 2004 after a hearing. Apparently, Smith withheld Izaak from a 48 hour visit with the Quiggs because the Quiggs intended to trim their Christmas tree that weekend, which is contrary to the Smith's WatchTower religious beliefs. The record indicated that Gavin Smith and his parents paddled Izaak if he participated in any of the Quigg's activities if those activities were forbidden by the WatchTower Society.

The Quiggs moved for an order that the Smith Trio pay all attorney fees, guardian ad litem fees, psychological examination fees, and other costs associated with the proceedings. The court eventually sustained the motion and ordered appellant and the Smiths collectively to pay \$105,540.37 with statutory interest. The court found the Smith Trio in civil and criminal contempt in the final entry dated December 30, 2004. The court found because of the contemptuous actions of the Smith Trio, the Quiggs were required to take drastic, prolonged court action. The court found all activity and expenses after the initial visitation order were a result of the Smith Trio's improper conduct. The court found the Smith trio had all operated in bad faith, and all the fees stemmed entirely from their refusal to comply with the orders of the court. The court found they all participated in the fraudulent adoption proceedings in

July 2003. The court found the Smith Trio never had any intention to allow the Quiggs any contact with the child. The trial court specifically found both Gavin Smith and his parents had a "track record" of total disdain for any court order and believe their own personal wishes outweigh the court's order.