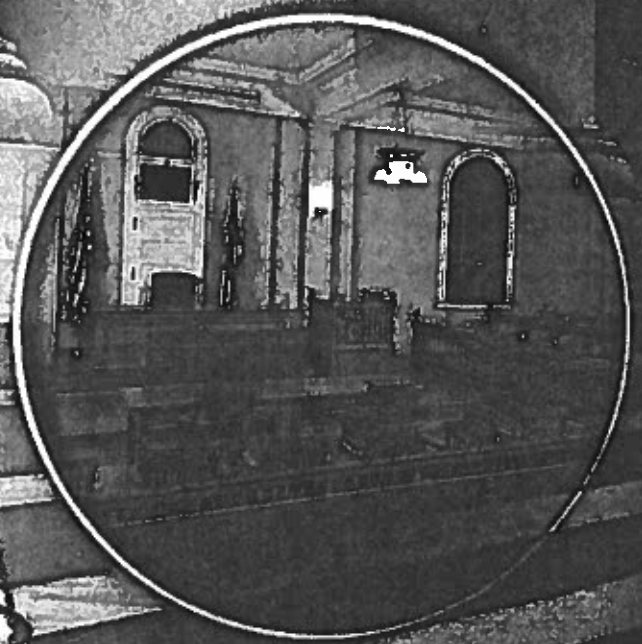


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Battle v. Battle (Family Law: A Child Custody Hearing)

Facts

All of the parties agree to the following facts:

Basil Battle and Brenda Stark Battle were married in August 1992. Brenda had one son, Jason, by a previous marriage. During Brenda and Basil's marriage, they had another child, Edward, who was born with a hearing disability.

In May 2002, Brenda voluntarily separated from Basil. She left her two sons with Basil while she went to live with her mother. In October 2002, Brenda and Basil entered into a formal separation agreement, which is included in the documents for this case.

During the period of their separation both Brenda and Basil dated other people. Basil has announced his intention to marry Winnie Canyon as soon as he obtains a divorce from Brenda.

In November 2003, Basil filed for divorce, and asked for custody of the children. Brenda consented to the divorce, but she contests Basil's petition for custody of the children. Assume a hearing is being held in the Family Court of Anytown in January 2004 to determine who shall have custody of Jason Battle, age 12, and Edward Battle, age 5.

The Law

The Family Court judge will make a decision in this case based on the law of the State of Anywhere which reads as follows:

Anywhere Statutes §83-8001: In cases involving the custody of children after a divorce, the judge shall apply the "best interests of the child" standard. In reaching this decision, the judge may consider, but is not limited to, the following factors:

1. The parents' wishes
2. The child's relationship with each parent, family members, and any other important people in the child's life

3. The mental and physical health of each parent to raise the child
4. The person with whom the child has developed the strongest bond
5. The arrangement that would be least disruptive to the child
6. The child's wishes if the child is over 12 years of age

The judge may also consider, but is not bound by, any prior agreements made by the parents. The judge may consider any type of custody arrangement, including joint custody. Joint custody means that parents share both physical (i.e., where the child lives) and legal (i.e., the ability to make primary decisions for the child) custody of the child. If it is at all possible, siblings should be kept together.

Parties and Witnesses

For the Plaintiff:

1. Basil Battle, plaintiff
2. Jason Battle, witness for the plaintiff

For the Defendant:

1. Brenda Stark Battle, defendant
2. Arthur Baxter, witness for the defendant

Documentary Evidence

1. Affidavit of Basil Battle
2. Affidavit of Jason Battle
3. Affidavit of Brenda Stark Battle
4. Affidavit of Arthur Baxter
5. Separation Agreement

DOCUMENT 1

Affidavit of Basil Battle

My name is Basil Battle. I am the plaintiff in this case. I am asking the Court to grant me permanent custody of my two sons, Jason and Edward.

When my wife Brenda left our home over one year ago, she left our children, Jason and Edward, in my custody. Several months after she left, she signed an agreement formally leaving them in my care.

I have provided my sons with the sort of stable, disciplined home they need. The boys simply would not get this kind of care with Brenda, who is extremely unstable as shown by the way she just up and left me with the kids. Her job requires her to travel at times so she cannot see the kids as much as she would like. Her current boyfriend, Bert, would be completely unfit to take care of my sons. He's some kind of artist, and all he does is drag Brenda around to poetry readings and art shows. I let Jason spend a weekend with Brenda and Bert once, and the boy came home with all kinds of tales of weird parties at art galleries and that sort of nonsense. I let Jason help me out with football practice after school, and we go hiking and camping; that's the kind of activity a parent should provide for a child.

A few months after Brenda left, my good friend Winnie Canyon moved in to help me with the boys. I love her, and she's been a great support. Her 10-year-old son Charles is like a son to me, and he's best friends with Jason. Charles lives with his father, but Winnie sees him every other weekend and on Tuesday nights.

I've recently enrolled Edward, our 5-year-old, in a special program for hearing disabled children, and he seems to be doing quite well. Winnie and I attend special training sessions for parents and guardians of hearing disabled children once a week. Brenda never could cope with Edward's problem; she used to yell at him and slap him when he seemed not to hear what she was telling him to do.

Another reason the children should be left in my care is the fact that they really want to stay with me. Jason is particularly able to express himself on this subject. We've really become much closer since he was arrested for shoplifting four months ago. I really hit the roof when I got the call from the police; I'd warned him about hanging out with the particular group of kids that was involved, but he thought he could get away with ignoring my orders. Well, I really straightened him out after that little incident, and we've been very close since then.

Financially, I'm in good shape. Between my salary for teaching and extra money for coaching and a few odd jobs I do around the community, I earn about \$35,000 per year.

/s/Basil Battle

DOCUMENT 2

Affidavit of Jason Battle

My name is Jason Battle. I am in sixth grade. I like school all right. I get mostly B's. I want to play on the football team when I am in high school.

I want to live with my Dad. I want my brother Eddie to stay with me, too, and I know he wants to stay. Dad and I usually get along pretty well, except for times when he makes me do stuff that I really hate, like working out with the football team. But I don't complain because he gets really mad and calls me a "wimp" if I don't do it. I like it when we go hiking together, because that's when we really get time to talk. It's more fun than going out with Bert, the guy Mom wants to marry, because all he does is take me to boring art galleries and poetry readings.

Mostly I want to stay with Dad because I know he cares a lot about me, and I'm not too sure Mom cares that much—since she left. Of course, she did come to court with me the time I was arrested for shoplifting; Dad didn't because he was so mad he said he hoped they'd lock me up and he didn't care what happened. But I know he didn't mean that.

Actually, I guess I wouldn't mind it if I didn't have to decide. I'd like it best if Mom and Dad could get back together. Mom's a lot nicer than Winnie Canyon. Her son Charles worships me. He's an OK kid but sometimes he gets on my nerves since he always wants to hang out with me.

/s/Jason Battle

DOCUMENT 3

Affidavit of Brenda Battle

I am Brenda Battle. I love my children, and I want to have custody of them. I see them every opportunity I get—at least three times a week. I would see them more if Basil did not make things so difficult. I earn \$60,000 per year and I have to work hard for my money. I just bought a four bedroom house near the children's school.

I never wanted to leave them with Basil, but I just couldn't take his drinking and yelling, at me and the kids. I just had to get out of there even without Jason and Edward. I did not want the boys to be scarred by our constant fights, brought on by Basil's terrible temper, which always was worse after he'd had a few drinks after work.

I did not want to sign the separation agreement, but I was under great mental stress at the time. Basil threatened not to let me visit the boys if I didn't sign. In fact, I'm still afraid that, even if I were to get custody, he might kidnap Jason and Edward and take them to another state.

Jason is rightfully my son by my first marriage, and he's only Basil's by adoption. I know that Jason loves me and would choose to live with me if he could. But poor Jason's been terrified of Basil in the last year and particularly since the shoplifting incident when Basil beat Jason after I brought the child back from the police station. Jason would not have been in trouble that time if Basil were any kind of good parent. Basil was off somewhere with that woman he's living with, Winnie Canyon, and he didn't even know who was taking care of the kids.

My boyfriend, Bert, is just great with the children. He's particularly patient with Edward, and he knows sign language and is teaching me to communicate with Edward. He's a very gentle, caring person. He's an artist and we enjoy many cultural events together. Bert would give the boys the kind of affection they'll never get from Basil. I plan to marry Bert as soon as the divorce is final.

/s/Brenda Battle

DOCUMENT 4

Affidavit of Arthur Baxter

My name is Arthur Baxter. I am Jason Battle's gym teacher at Anytown Junior High School.

I know both Jason and Basil pretty well. This whole divorce business has been very hard on Jason. His attention span in class has become very short. His behavior is disruptive, which it never was before Brenda left. What concerns me more,

though, is the rough treatment Basil is giving him. I know Basil through the weekly meeting of area coaches and gym teachers. Basil has a reputation for being a real hard-driving coach. His practices are very strenuous for high school players. What worries me is the fact that he makes Jason practice with his high school team. Jason isn't old enough, and he certainly doesn't have the physical stamina for that kind of workout. Naturally, Jason drops out of the workout when he gets tired, and then Basil gives him a hard time. I've seen it once or twice when I've stopped by the high school field to watch the team practice. Basil will yell stuff at Jason in front of the high school boys like, "Do you want to grow up to be a wimp like your mother's sissy friend Bert?" That's a miserable way to treat a 12-year-old. Basil does love Jason, though. He just has a funny way of expressing it.

Brenda Battle is a lovely woman and a good mother. Until she was forced to leave her home, she devoted herself entirely to those boys. A few times, Jason has told me that he really misses her and wishes she would come back. Some weeks he told me he only sees her on the weekend. Even though he says he wants to stay with Basil, I think he'd be better off going with Brenda.

/s/Arthur Baxter

DOCUMENT 5

Separation Agreement

This agreement, made this 10th day of October, 2002, is between Basil Battle (Husband) and Brenda Battle (Wife). We agree as follows:

1. Edward Battle and Jason Battle shall both remain in the custody of the Husband.
2. In order to provide the best possible place for the boys to grow up, Edward and Jason, along with the Husband, will continue to live in the family home.
3. With the permission of the Husband, the Wife may visit the two boys at the family home or at the Wife's residence.
4. It is the intention of the Husband and the Wife not to live together and to seek a complete divorce as soon as possible.
5. The Wife agrees not to use any of the Husband's credit in buying items for her use.
6. These conditions should be included in the divorce decree.
7. Husband and Wife have voluntarily entered into this agreement. There was no unnecessary pressure on either party to sign this document.

/s/Basil Battle, Husband

/s/Brenda Battle, Wife

SKILLS USA TRIAL ADVOCACY RUBRIC

Scoring: Students can obtain a maximum of 1,000 points on this exercise. To determine the score, assign a point value to each category (e.g., Preparation and Research) and multiply that value by the number in parenthesis (e.g., 4).

PREPARATION AND RESEARCH (X4)

- | | |
|--------|---|
| 90-100 | Attorney questions and/or arguments relevant, logical, and clear; questions and/or arguments properly formed and delivered. |
| 70-80 | Attorney questions and/or arguments clear, logical, and relevant most of the time; most questions properly formed. |
| 60-50 | Questions and/or arguments and performance shows a lack of preparation. |

THEME/THEORY OF CASE (X1)

- | | |
|--------|--|
| 90-100 | Well developed and obvious theme/theory; used throughout presentation. |
| 70-80 | Theme/theory is apparent, but not consistently presented. |
| 60-50 | No apparent theme/theory presented; needs work. |

VOICE (X1)

- | | |
|--------|---|
| 90-100 | Easily understood; consistent use of appropriate rate, volume, and intonation. |
| 70-80 | Understood most of the time; appropriate rate, volume, and intonation most of the time. |
| 50-60 | Not easily understood; delivery needs work. |

EYE CONTACT (X1)

- | | |
|--------|--|
| 90-100 | Establishes appropriate eye contact for the situation and setting. |
| 70-80 | Establishes appropriate eye contact most of the time. |
| 50-60 | Does not establish eye contact. |

AUTHENTICITY (X1)

- | | |
|--------|--|
| 90-100 | Seems very real; excellent use of body and facial expression; words and gestures match; well adapted to setting. |
| 70-80 | Believable; adequate use of body and facial expression; fairly well adapted to setting. |
| 50-60 | Needs to be more convincing. |

COURTROOM DECORUM (X1)

- | | |
|--------|---|
| 90-100 | Appropriate interaction with Judge and witness; stays in character. |
| 70-80 | Appropriate interaction with others most of the time. |
| 50-60 | Distracted, inappropriate behavior. |

WRITTEN TEST SCORE 0-100 (X1)