



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

August 16, 1991

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 91- 93

Philip E. Winter  
Lyon County Counselor  
Courthouse  
Emporia, Kansas 66801

Re: Public Health -- Confidential Communications and Information; Treatment Facility Patients -- Privilege of Patient of Treatment Facility to Prevent Disclosure of Treatment and Confidential Communications; Extent of Privilege; Treatment of Child

Synopsis: It is our opinion that when a court awards sole custody of a child, the noncustodial parent is not authorized to obtain treatment for the child or receive confidential information about the child from a mental health center. Cited herein: K.S.A. 1990 Supp. 60-1610; 65-5602; 65-5603.

\* \* \*

Dear Mr. Winter:

As Lyon county counselor you request our opinion regarding the rights of the non-custodial parent to authorize the release of records or obtain treatment in situations involving a community mental health center and treatment of a child whose parents are divorced, with sole custody granted to one parent.

The Kansas court in Trompeter v. Trompeter, 218 Kan. 535, 539 (1976) defined custody "as that which embraces the

sum of parent rights with respect to the rearing of a child, including his care. It includes the right to the child's services and earnings, and the right to direct his activities and make decisions regarding his care and control, education, health and religion."

As you stated in your opinion request, K.S.A. 1990 Supp. 60-1610(a)(4)(B) allows sole custody. The statute states that "[t]he court may place the custody of a child with one parent, and the other parent shall be the noncustodial parent. The custodial parent shall have the right to make decisions in the best interests of the child, subject to the visitation rights of the noncustodial parent." (Emphasis added). "The right of a divorced parent to custody arises solely from the court order, which determines the rights of the parties as to the care and control of the child. The rights of a parent refused custody are not abrogated, but only curtailed." 27C C.J.S. Divorce § 645, p. 227 (1986).

When the court places the child in sole custody of a parent "[t]he other parent becomes the nonresidential parent and has rights of access or visitation rights. The residential parent has the right to make decisions in the best interests of the child, subject to visitation rights of the nonresidential parent . . . [t]he ultimate decision-making power [rests] in one parent." Elrod, I Kansas Family Law Handbook, § 12.032 (1990).

The custodial parent has control over the child's life and is charged with the duty to make the decisions based on the best interests of the child. These decisions are subject to the visitation rights of the noncustodial parent. However, rights to visit a child do not rise to the same level as rights to obtain treatment since this would be taking control over the child's life and the "award of the custody of a child to one parent operates to divest the other parent of all right of control over the child. . ." 27C C.J.S. Divorce § 645, p. 227-228 (1986). Therefore, under K.S.A. 1990 Supp. 65-5602, if the patient, patient's guardian, conservator, or personal representative of a deceased patient claims the privilege set forth in this statute preventing the disclosure of information regarding the patient's treatment or diagnosis, then the noncustodial parent cannot receive the protected information unless an exception to the privilege, K.S.A. 1990 Supp. 65-5603, is applicable.

In conclusion, it is our opinion that when a court awards sole custody of a child, the noncustodial parent is not authorized

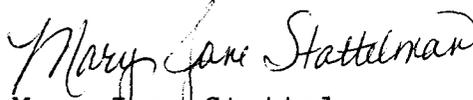
Philip E. Winter  
Page 3

to obtain treatment for the child and receive confidential information about the child from a mental health center.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelman  
Assistant Attorney General

RTS:JLM:MJS:bas