



Written by [Jack Kenny](#) on February 1, 2011

## Court to Rule in Religion, Home-school Battle

Brenda Voydatch of Meredith has appealed the July 2009 ruling of the state Family Division Court in Laconia in a legal battle between Voydatch and her ex-husband, Martin Kurowski, over the education of their child, Amanda. Kurowski claimed the home-school environment and the teaching of Voydatch's religious beliefs were isolating Amanda socially and damaging his relationship with her. Voydatch has residential custody of the child, but the parents have joint decision-making authority under previous court orders. Kurowski, a Portsmouth resident, also has visitation rights. The parents have been divorced since the child was two months old. Voydatch home-schooled her through the fourth grade, but has since placed Amanda, now 11, in the Interlakes Middle Tier School in Meredith, in accordance with the court order.



The ruling followed a hearing in which Kurowski argued that the child's schooling had left her "extremely isolated" and that she spent her school days mostly "by herself in front of a computer in her mother's house." She had difficulty in engaging and interacting with people of different beliefs, he said, and was troubled by her belief that her father did not want to spend eternity with her in heaven. Kurowski told the family court that Voydatch had told Amanda numerous times in his presence that he is a sinner and, "He doesn't want to be in heaven with you." Kurowski also testified that her mother's teaching was imparting to the child a narrow and restrictive view of a woman's place in the world, claiming Amanda had told him Hillary Clinton is a sorcerer and could not be President because it is "man's job." He argued that in a public school the child would be exposed to a wider range of people and viewpoints that would better equip her to "think outside the box" and make decisions on her own.

"I want her to be able to make her own decisions about what she believes in, what she wants to do," he told the court. "But I want it to be an educated decision based on a lot of different experiences, not just her religion and the kids from her church." He testified that the child's mother told him of her concerns about Amanda riding on a school bus with kids who swear, and about her being in a school environment where many of her peers show an unhealthy interest in drugs, alcohol, and sex at an early age. "Ms. Voydatch simply doesn't want the child exposed to these things," said his lawyer, Joshua Gordon, "while Mr. Kurowski thinks good choices come from an understanding of the difficulties they pose."

The court found the child's "discomfort" in spending time with her father "appears to flow from her religious training." In his decision, Marital Master Michael Garner relied heavily on the report of the child's guardian ad litem, who found that Amanda "appeared to reflect her mother's rigidity on



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questions of faith." The report also noted that Amanda had challenged her counselor "to say what the counselor believed and she prepared and highlighted biblical text for the counselor to read and discuss." The child was "visibly upset when the counselor (purposely) did not complete the assignment," the report said.

In court, the guardian ad litem testified: "I don't care what (the child) ends up believing. That will be her choice. I just want to make sure she has the ability to think about her choice."

Her home studies included math, reading, English, social studies, science, handwriting and spelling, as well as bible class, the court found, in addition to an outside theater class and piano lessons. Beginning in January 2009, Amanda took art, Spanish, and physical education classes at the local middle school, where statements from her teachers "reflect that she is an active participant and is adapting well and making friends and keeping up with the work," the court said. The guardian ad litem testified to an updated interview with the Spanish teacher, however, who found Amanda was a pleasant participant in the class, but "didn't have as much intimacy with the group as might be expected," the court said. Toward the end of the school year, her art teacher commented that the child had a number of absences that resulted in unfinished projects.

"The parties do not debate the relative academic merits of home schooling and public school," the court found. "It is clear that the home schooling that Mrs. Voydatch has provided has more than kept up with the academic requirements of the Meredith public school system. Instead, the debate centers on whether enrollment in a public school will provide Amanda with an increased opportunity group learning, group interaction social problem solving and exposure to a variety of points of view." Based on the testimony of both parents and the guardian ad litem, "and by the standard of the preponderance of the evidence," the court ruled, "it would be in Amanda's best interest to attend public school."

The marital master said, "The court has not considered the merits of Amanda's religious beliefs, but considered only the impact of those beliefs on her interaction with others, both past and future." The court, he said, was "guided by the premise that education is by its nature an exploration and examination of new things, and by the premise that a child requires academic, social, cultural and physical interaction with a variety of experiences, people, concepts and surroundings in order to grow into an adult who can make intelligent decisions about how to achieve a productive and satisfying life."

"The court cites no authority for its definition," Voydatch's attorney, John Simmons, [argued in the brief](#) he submitted to the state Supreme Court. Simmons argued the family court overstepped its authority by considering factors nowhere found in the relevant statutes. State law, he said, "sets forth the criteria to be used by a court in assessing a child's best interest. Nowhere in that criteria is there room for considering a child's alleged religious 'rigidity.'" Citing diversity and tolerance as necessary components of the child's education "is not a legitimate exercise of the court's function and authority," Simmons said, arguing "it is parents who decide the purpose of education for their children, not the courts."

But during arguments at the Supreme Court on January 6, Justice Robert Lynn [challenged the claim](#) that the lower court ruling trumped parental rights. "This is not state versus parent," said Lynn. "The state was forced into this because it's a dispute between the parents that someone had to resolve." Simmons argued that absent "clear and compelling evidence" that the home schooling was detrimental to the child's physical, intellectual, or emotional development, the court should not have ordered the change.



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"The trial court essentially announced a general rule or presumption in favor of public school for all adolescents when parents in custody disputes cannot agree," he wrote in his brief to the court. Such a rule is contrary to the express findings of the Legislature." Gordon argued that the order did not constitute a modification of the previous Parenting Plan, "because this is the only court ruling on the nature of the child's education."

In dismissing a motion for a reconsideration and stay of the order, the marital master found that a claim by Voydatch's of constitutional protection for her right to home-school her child "ignores the Constitutional rights of Mr. Kuworski who also has joint decision-making authority for Amanda." The ruling left both parents "free to provide religious guidance" to the child, the court said.

In an [amicus brief](#) filed by the Home School Legal Defense Association, and joined by Christian Home Educators of New Hampshire and Catholics United for Home Education, attorney Michael Donnelly argued that since the child's educational needs "were being met exceptionally by her mother," the family court's presumption should have been "in favor of the child continuing in the familiar educational setting rather than disrupting the child." Letting the lower court's decision stand could set a bad precedent for both the state and the nation, Donnelly claimed.

"Due to the high publicity of this case, other courts may adopt the trial court's presumption rule," he wrote. "This would be contrary to law and detrimental to home schooled children both across the state and potentially in other states, who might look to this case for guidance about this increasingly common issue."

The New Hampshire Supreme Court is expected to decide the case before its current session ends in May.



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