

## **Breast Cancer Cited in Case in which Mom Loses Primary Custody of Daughters**

By Barbara J. King

A North Carolina judge's decision to deny a mother primary custody of her two young daughters, in part because she is diagnosed with terminal breast cancer, has shocked many parents and begs the question of whether in a New York a judge may rule the same way.

As a result of a bitter child custody battle, the 5- and 11-year-old daughters of Alaina Giordano and Kane Snyder will have leave their home with their mother in Durham, N.C. and relocate to their father's home in Chicago in June, according to an ABC News report

. Giordano moved her family to Durham when her husband got a job there, but Snyder moved to Chicago for another job after they separated, according to a Raleigh broadcast news station.

Although allegations of infidelity, domestic violence and mental illness were also factors in the case, District Court Judge Nancy Gordon's citation of the mother's cancer diagnosis as a reason why her custody status should be downgraded from primary to non-primary has sparked outrage from readers on the Internet. Judge Gordon also cited the 37-year-old mother's unemployment status in her ruling, according to the ABC report.

Citing Helen Brantley, the forensic psychologist used in this case, Judge Gordon found that "The more contact [the children] have with the non-ill parent, the better they do. They divide their world into the cancer world and a free of cancer world. Children want a normal childhood, and it is not normal with an ill parent,"

It is hard to say whether a New York judge would have reached the same conclusion. A parent's health is only one of many factors a judge would have to take into consideration when determining what is in the child's best interest in determining custody. Other factors range from the historical roles of the parents in raising the children, the parent's availability for the children (e.g. their work schedules), the parent's living arrangements, age, income, any history of domestic violence, and often, the wishes of the children.

In the case of Mrs. Giordano, a lawyer might argue that given the mother's terminal condition, it would be best for the children to be able to spend as much time with their mother as possible before losing her to the illness and that, if supported by the psychological evidence, the children may even come to resent their father for interfering with that opportunity.

In most cases, health problems alone do not determine a parent's chances of gaining primary custody of his or her children. In fact, in *Hatz v. Hatz*

, the New York Supreme Court decided not to modify a mother's custody of her young daughter despite the mother having become a paraplegic following a motor vehicle accident. The girl's father argued the pre-accident custody order should have been modified to grant

him primary custody because of the severe change in the mother's physical condition. Noting that the mother had adjusted well to her disability and the "harmful impact" of separating the child from her, the court said it was in the girl's best interest the custody order remain unchanged.

As Giordano's case demonstrates, it is crucial for parents to have strong legal representation in child custody cases so a judge can see why it is in the child's best interest to be in their custody, despite potentially negative factors. Parents with child custody concerns should contact a family and matrimonial law attorney.